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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1266

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

APPENDIX.

RELEVANT DOCKET ENTRIES IN UNITED STATES DISTRICT COURT.

11/20/59	Filed complaint and copy.
11/20/59	Issue Summons and copy with copy of complaint.
4/ 7[illegible]0	Filed answer.
4/15/60	Filed appearance of Laurence B. Dodds, atty. for pltff.
1/11/62	Filed motion to quash subpoena duces tecum—Affidavit of L. B. Dodds in support of pltff's motion to quash subpoena duces tecum and exhibits.

3/16/62 Enter order, ptlff: mo. to quash subpoena duces tecum overruled & certain limitations imposed, Austin, J. Mld. Ntcs. 3/20/62.

4/ 3/63 Pre-trial conference held and adjourned to May 22, 1963 at 9:00 a.m.—Austin, J.

5/ 9/63 Plaintiff's Memorandum in support of its motion to strike pars 13 of deft's Answer.

5/ 9/63 Fld Affidavit of L. Dodds in support of pltff's Motion to strike and pltff's Motion for leave to file the same—

5/22/63 Fld Motion and affidavit of deft for leave to file counter-claim and *Counterclaim.*

7/23/63 Fld Pltf's Reply to Deft's counterclaim.

9/ 9/63 Order issues of patent and anti-trust separated. Petition for contempt order denied as to patent case and contd. generally as to anti-trust case. Cause contd. to Oct. 7, 1963 for trial of patent issue and contd. to Sept. 13, 1963 for ruling on pending motions.
Austin, J.—Mld Ntcs. 9/10/63.

9/10/63 Motion pltf. to strike Para 13 of deft's answer is sustained, Austin, J., Mld. Ntcs. 9/11/63.

10/10/63 Cause called for trial of issue of patent infringement. Plaintiffs evidence heard in part. Trial adjourned to Oct. 11, 1963—Austin, J.
Mld. Ntcs. 10/11/63.

10/21/63 Enter order further rebuttal heard. Plaintiff rests. Surrebuttal heard. Parties rest. Advisement—Lv to pltff to file post trial brief and suggested findings of fact and conclusions of law within 45 days. Leave to deft to file post trial brief and suggested findings of fact and conclusions of law within 45 days thereafter and leave to pltff to reply thereto within 20 days thereafter—Austin, J.
Mld. Ntcs. 10/22/63.

2/17/64 Cause called for trial—Opening statements heard. Conuter-pltffs evid heard in part and trial adjourned to Feb. 18, 1964, Austin, J.
Mld. Ntcs. 2/18/64.

2/25/64 Filed stipulation re description of companies contained in Appendix III to Zenith's Pre-trial brief.

2/25/64 Order—Further evid. heard for counterdefendant. Counterdefendant rests. Rebuttal heard. Parties rest. Arguments heard in part. Trial adjourned to 2/26/64. Austin, J.
Mailed Notices 2/27/64.

2/26/64 Order—Further arguments heard and concluded. Advisement. Leave to counterplaintiff to file post-trial brief and suggested findings of fact and conclusions of law within 30 days. Leave to counterdefendant to file post-trial brief and suggested findings of fact and conclusions of law within 30 days thereafter and leave to counterplaintiff to file reply within 20 days thereafter. On motion to plaintiff, time to file reply with respect to patent issue extended to 3/26/64. Austin, J.
Mailed Notices 2/27/64.

4/15/64 Filed defendant's Post Trial Brief on the Antitrust issues raised in the answer and counterclaim.

6/ 8/64 Filed Plaintiffs post trial brief on misuse and antitrust issues.

7/23 64 Filed Defendant's Post Trial Reply Brief on the Antitrust issues raised in the answer and counterclaim.
(File E (Copy).

1/25/65 Enter Findings of Fact and Conclusions of Law. Draft Austin, J. Cause continued to Feb.

25, 1965 for entry of judg.—Austin, J. Ntcs. mld. 1/26/65.

2/11/65 Filed appearance of attorneys for plaintiff. Proof of Service and Affidavit re Rule GR 39.

2/15/65 Order continuing from 2/25/65 to 3/29/65 the date for submission of judgment in the above case, and permitting plaintiff to file prior to 3/29/65 such motions as it deems appropriate.—Draft—Austin, J.
Ntcs. mld. 2/16/65.

3/19/65 Filed Notice re defendant-Counterclaimant's Proposed Final Judgment and Decree.

3/26/65 Filed motion for Withdrawal of Antitrust Findings and Conclusions and for other relief.

3/26/65 Filed Memorandum of Hazeltine Research, Inc. in support of its motion for withdrawal of Antitrust Findings and conclusions and for other relief.

3/26/65 Filed plaintiff's motion for withdrawal of Findings and Conclusions as to Misuse of Patents.

3/26/65 Filed Memorandum in Support of Plaintiff's Motion for Withdrawal of Findings and Conclusions, as to Misuse of Patents.

3/26/65 Filed Offers of Proof by Hazeltine Research, Inc. in support of Motion for Withdrawal of Findings and Conclusions, etc.

3/26/65 Filed Affidavit of Laurence B. Dodds with exhibit attached.

3/26/65 Filed Affidavit of David Westermann.

3/30/65 Enter order, cause called for hrg. on pltff's motion for withdrawal of findings of fact and conclusions of law as to antitrust issues and misuse—argts heard in part and hearing adjourned to March 31, 1965. Austin, J. Mld. Ntcs. 3/31/65.

3/31/65 Further argts. hd with respect to motion of Hazeltine for withdrawal of Findings of Fact and Conclusions of Law, etc. and hrg. adjourned to April 1, 1965. Austin, J.—Mld. Notices 4/1/65.

4/ 1/65 Further argts hd on motions of Hazeltine for withdrawal of Findings of Fact and Conclusions of Law on antitrust issue and misuse. Argts. concluded. Oral motions of Hazeltine for leave to file affirmative defenses and to dism. counterclaim for lack of proof & lv is granted to file said motions in writing within 5 days nunc pro tunc as of April 1, 1965. Evidence is reopened for the sole and limited purpose of submitting proof of damages as to Australia and England. Cause cont'd to June 1, 1965 for hrg of said proof. Counsel for Zenith to prepare partial judgment order and present same April 2, 1965, at 11 A. M.—Austin, J. Mld. Notices 4/2/65.

4/ 2/65 Filed defenses of Hazeltine Research, Inc.

4/ 2/65 Filed SPECIAL APPEARANCE for purposes of opposing entry of judgment against Hazeltine Corporation.

4/ 2/65 Filed Memorandum in Support of Special Appearance in opposition to entry of Judgment against Hazeltine Corporation.

4/ 2/65 Filed Motion of Hazeltine Research, Inc. for Dismissal of Counterclaim. Argts. hd on objs. to proposed order of Zenith for judg and argts hd with respect to certain stipulation and advisement. Cause cont'd to April 5, 1965 at 10:15 A. M. for ruling. Motion of Hazeltine to dis. counterclaim is denied.—Austin, J. Mld. Notices 4/5/65.

4/ 5/65 Filed Reply Memorandum of Hazeltine Corporation in Opposition to entry of Judgment against it.

4/ 5/65 Enter Judg and Decree—Deft—Counter-claimant recover of pltffs—counter-dfts. Hazeltine Corp., et al. the sum of $19,042,173.00 and costs and atty's fees Claims 1, 2 and 4 of U. S. Letters Patent No. 2,547,648 invalid etc. Pltff's complt dismd. Hazeltine Corp., et al enjoined, etc. Jurisdiction retained and further hrg cont'd to June 1, 1965.—Draft—Austin, J. Mld. Notices 4/6/65.

4/ 7/65 Filed Certified Copy, U. S. C. A. of order entered April 7, 1965. Ordered that the Emergency Motions are denied and further ordered that the petition for Writ of Mandamus is hereby denied.

4/13/65 Filed offer of Security by Hazeltine Corporation in connection with its Motion for Stay of Enforcement of Money Judgment.

4/13/65 Filed Offer of Security by Hazeltine Research, Inc. in connection with its Motion for Stay of Enforcement of Money Judgment.

4/19/65 Enter order granting stay of execution of judgment. Draft—Supersedeas bond of Hazeltine Research, Inc., et al. approved—Austin, J. Mld. Notices 4/19/65.

4/19/65 Filed Notice of Appeal of Plaintiff, Hazeltine Research, Inc., and of Hazeltine Corporation, respectively.

4/27/65 Filed certified copy of order entered April 26, 1965 by the U. S. C. A., 7th Circuit, denying petitions for writs of mandamus and prohibition in causes Nos. 15106 and 15107.

10/15/65 Further evidence heard for pltff counter-deft and adjourned to Oct. 18, 1965—Austin, J. Mld. Ntcs. 10/19/65.

10/20/65 Enter order—Pltff-counterdeft rests—Opening statements heard for deft-Counterpltff—Evidence heard—Deft-counterpltff rests—Rebuttal heard. Parties rest—Arguments heard—Cause adjourned to Oct. 21, 1965—Austin, J.—Mld. Ntcs. 10/21/65.

10/21/65—Cause continued to Nov. 12, 1965 at 2:00 p.m. for hearing of further proof as to method of computation of Australian and English market shares —Austin, J. Mld. Ntcs. 10/21/65.

11/22/65 Evidence heard—Parties rest—Arguments heard in part and hearing adjourned to Nov. 23, 1965—Austin, J.—Mld. Ntcs. 11/23/65.

11/23/65 Further arguments heard and concluded—Leave to Hazeltine to file offers of proof within 20 days. Motion of Zenith for attys fees and costs under advisement and ruling reserved—Austin, J. Mld. Ntcs. 11/4/65.

11/30/65 Ordered—Defts motion to enter amended finding of fact and to enter final judgment entered and continued to Dec. 13, 1965 on motion of pltff motion of Hazeltine to dism counterclaim for lack of indispensable party is denied—Austin, J.
Mld. Ntcs. 12/1/65.

12/ 9/65 Filed Memorandum of Hazeltine Corporation, appearing specially.

12/ 9/65 Filed Memorandum of plaintiff, Hazeltine Research, Inc., concerning form of proposed amended finding of fact XXXVI and proposed final judgment submitted by Zenith Radio Corporation on November 30, 1965.

12/13/65 Filed Offer of Proof on market share and damages (pltff).

12/13/65 Offer of Proof recd on behalf of Hazeltine together with certain affidavits in support thereof. Enter findings of fact and conclusions of law (Draft) Enter final judgment in favor of Zenith Radio Corp., deft-counterclaimant and against Hazeltine Corp., et al, in sum of $15,919,458 and costs and attys fees—Jurisdiction of this Court reserved for hearing on costs and atty's fees (Draft) Austin, J.
Mld. Ntcs. 12/14/65.

12/29/65 Filed notice of appeal by Hazeltine Research, Inc. Mailed copy of notice of appeal to attys. for defts.

12/29/65 Filed notice of appeal by Hazeltine Corporation. Mailed copy of notice of appeal to attys. for defts.

12/29/65 Filed notice of appeal by Hazeltine Corporation. Mailed copy of notice of appeal to attys. for defts.

RELEVANT DOCKET ENTRIES IN UNITED STATES COURT OF APPEALS.

7/15/65 Filed original record on appeal.

7/23/65 Filed original and 4 copies of motion under rule 15(f) to vacate judgment, etc. service.

8/ 3/65 Filed original and 4 copies of answer to Hazeltine Corp. motion to vacate judgment, affidavit of McConnell.

8/ 6/65 Filed original and 4 copies of appellants motion for leave to file reply brief in support of its rule 15(f) motion to vacate judgment on jurisdictional grounds, affidavit and service (reply brief tendered is additional affidavit of L. B. Dodds).

8/16/65	Entered order that motion to vacate judgment be taken with the case.
2/18/66	Filed original and 4 copies of motion of appellant to consolidate with 15246-7 and for briefing of the antitrust issue, service (15563-4).
3/ 1/66	Entered order granting motions of February 18, February 24 and February 25, 1966 (15563-4).
7/ 6/66	Filed original and 4 copies of motion to correct record, stipulation (15246-7).
7/ 7/66	Entered order granting motion of July 6, 1966.
12/ 6/66	Filed original and 4 copies motion to vacate December 13, 1965 judgment on jurisdictional grounds and to incorporate herein prior Rule 15(f) motion to vacate April 5, 1965 judgment and briefs, affidavit and appendices filed in support thereof, service.
12/12/66	Filed original and 4 copies motion to correct omissions in record on appeal, affidavit and service and stipulation.
12/20/66	Entered order granting motion of December 12, 1966.
12/20/66	Filed, per order of December 20, 1966, supplemental record consisting of proposed findings of facts and conclusions of law with respect to the defense of misuse and defendant counterclaimant under the antitrust laws and p. 951 of trial transcript of proceedings.
12/13/67	Entered judgment order.
12/26/67	Filed original and 4 copies motion to stay mandate, affidavit and service.
12/27/67	Filed original and 4 copies motion for extension of time to file petition for rehearing to January 3, 1968, affidavit and service.
12/27/67	Entered order granting motion of December 26, 1967.

12/27/67	Entered order granting motion of December 27, 1967.
1/ 3/68	Filed 30 copies of petition for rehearing en banc.
1/23/68	Entered order denying petition for rehearing or reconsideration en banc (Judge Fairchild voted for rehearing en banc "limited to one issue").
1/26/68	Filed original and 4 copies motion to stay mandate, affidavit and service.
1/26/68	Entered order granting stay of mandates.
2/23/68	Filed original and 4 copies motion to stay mandate, affidavit and service.
2/27/68	Entered order granting stay of mandates to March 27, 1968.

IN THE UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

Hazeltine Research, Inc., *Plaintiff,* *vs.* Zenith Radio Corporation, *Defendant.*	Civil Action No. 59-C-1847. On Patent No. 2,547,648

EQUITABLE RELIEF SOUGHT. COMPLAINT FOR INFRINGEMENT OF UNITED STATES LETTERS PATENT.

To the Honorable the Judges of the United States District Court for the Northern District of Illinois, Eastern Division:

The Plaintiff for its Complaint alleges that:

1. Plaintiff, Hazeltine Research, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois.

2. Plaintiff is informed and believes, and therefore, avers, that Defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and has a regular and established place of
6 business and has committed the acts of infringement hereinafter alleged within the Northern District of Illinois, Eastern Division.

3. This is a Civil Action arising under the Patent Laws of the United States for infringement of United States Letters Patents.

4. On April 3, 1951, United States Letters Patent No. 2,547,648 was duly and legally issued to Plaintiff, as as-

signee of Arthur V. Loughren, the inventor thereof, for an invention in Automatic-Contrast-Control System For Television Apparatus, and, since such assignment, Plaintiff has been, and still is, the owner of said Letters Patent No. 2,547,648.

5. Plaintiff does not manufacture or sell television apparatus but, through its own laboratories and those of an affiliate company, conducts an extensive research and development program in the radio and television fields and licenses others to manufacture radio and television apparatus embodying the inventions resulting from such program; further, Plaintiff and its affiliate company have expended large sums of money in making the invention and improvements described and claimed in said United States Letters Patent No. 2,547,648 of benefit to its licensees and to the public and profitable to itself and they have been put into extensive use by manufacturers under license from Plaintiff.

6. Defendant has been selling and using, and continues selling and using television receivers embodying automatic-contrast-control systems for television apparatus and has been, and still is, aiding, abetting, and contributing to the manufacture, sale, and use of such television receivers by others.

7. The automatic-contrast-control systems embodied in the television receivers referred to in Paragraph 6 have been, and still are, utilizing the invention of said Letters Patent No. 2,547,648 and the aforesaid manufacture, sale, and use constitutes an infringement of said Letters Patent No. 2,547,648 by Defendant and will continue to do so unless enjoined by this Court.

8. Plaintiff has given notice to Defendant of its infringement of aforesaid Letters Patent.

9. Plaintiff is informed and believes, and therefore avers, that, notwithstanding aforesaid notice, Defendant

has continued and is continuing and threatens to continue said infringement in defiance of Plaintiff's rights as hereinabove alleged.

Wherefore The Plaintiff Prays:

1. That an injunction may issue against further infringement by Defendant and all those controlled by Defendant.

2. That an accounting be ordered for damages suffered by Plaintiff by virtue of aforesaid infringement.

3. That the cost of this Action be assessed against Defendant.

4. That Plaintiff may have such other and further relief as the equities of the case may require and as may to this Court seem meet and just.

Hazeltine Research, Inc.,
Mason, Kolehmainen, Rathburn and Wyss,
By M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Chicago, Illinois

Dated:

Of Counsel:
M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois.
E. A. Ruestow,
59-25 Little Neck Parkway,
Little Neck 62, New York.

16 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—59-C-1847) • •

ANSWER.

Now comes defendant Zenith Radio Corporation and, for its answer to the complaint herein, says:

1. The allegations of Paragraph 1 are admitted.

2. Answering Paragraph 2, defendant admits that it is a corporation duly organized and existing under the laws of Delaware, and that it has a regular and established place of business within the Northern District of Illinois, Eastern Division. The other allegations of Paragraph 2 are denied.

3. The allegations of Paragraph 3 are admitted.

4. Answering Paragraph 4, defendant admits that United States Letters Patent No. 2,547,648 issued on April 3, 1951, but denies that such Letters Patent were duly
17 or legally issued. Defendant has no knowledge respecting the other allegations of Paragraph 4 and therefore denies them, leaving plaintiff to its proofs.

5. Answering Paragraph 5, defendant admits that plaintiff does not manufacture or sell television apparatus and further admits that plaintiff and a corporation affiliated with plaintiff conduct research in the radio and television fields and license others to manufacture radio and television apparatus. Plaintiff is without knowledge respecting the other allegations of Paragraph 5 and therefore denies them, leaving plaintiff to its proofs.

6. Answering Paragraph 6, defendant admits that it has sold and used and continues to sell and use television receivers embodying automatic-contrast-control systems. The other allegations of Paragraph 6 are denied.

7. The allegations of Paragraph 7 are denied.

8. Answering Paragraph 8, defendant admits that it has received from plaintiff a written charge of infringe-

ment relative to Letters Patent No. 2,547,648. The other allegations of Paragraph 8 are denied.

9. The allegations of Paragraph 9 are denied.

18 Further answering the complaint, defendant avers:

10. United States Letters Patent No. 2,547,648 are invalid and void in law, and without force and effect, for each of the following reasons:

(a) The alleged invention thereof was patented or described in patents and printed publications in this country and elsewhere before the alleged discovery thereof by the alleged inventor designated therein, or more than one year prior to the date of application for said Letters Patent. Plaintiff will be given notice in writing by defendant of such patents and printed publications at least thirty (30) days before the trial hereof, in accordance with the provisions of Section 282 of Title 35, United States Code.

(b) Said Letters Patent fail to disclose and claim any patentable invention in view of the known art at the time the alleged invention or discovery thereof was made. Plaintiff will be given notice in writing at least thirty (30) days before the trial hereof of patents and printed publications disclosing said known art, in accordance with the provisions of Section 282 of Title 35, United States Code.

(c) The subject matter of the alleged invention of said Letters Patent was in public use or on sale in this country more than one year prior to the date of application for said Letters Patent. Plaintiff will be given notice in writing of the names and addresses of the persons who thus previously used or offered for sale the subject matter of said alleged invention, at least thirty (30) days before the trial hereof, in accordance with the provisions of Section 282 of Title 35, United States Code.

(d) The subject matter of the alleged invention of said Letters Patent was abandoned to the public because of unreasonable delay in making and asserting claims thereto.

(e) The claims of said Letters Patent are vague and indefinite and do not point out and distinctly claim the subject matter of the alleged invention of said Letters Patent, as required by Section 112 of Title 35, United States Code.

11. The claims of said Letters Patent No. 2,547,648 were, during the prosecution thereof before the United States Patent Office, so restricted in meaning and limited in scope, in order to distinguish the alleged invention thereof from prior art, that said claims do not describe or embrace any structures manufactured, used, or sold by defendant.

Further answering the complaint, defendant avers, on information and belief:

12. Plaintiff is pursuing, and for some years past has pursued, a policy of patent licensing which constitutes misuse of plaintiff's patents barring plaintiff from enforcing said Letters Patent No. 2,547,648 or any others of its patents. Plaintiff's policy is to grant no license for the manufacture, use, or sale of radio broadcast receivers of sound, monochrome television, and color television, other than its so-called "standard license," and to sue for patent infringement manufacturers of such products who refuse to enter into such "standard license." The standard license, by its terms, is a package license under all United States patents and applications for United States patents to which plaintiff has title or licensing rights. The package includes more than 400 patents and numerous applications. Under the terms of plaintiff's standard license the royalty payable by the licensee is precisely the same, whether the licensed products sold by such licensee embody one, or a

greater number, or none of the licensed inventions.
21 Plaintiff has stated to defendant that it will on request grant a license limited to one or two of its patents at royalty rates equal, respectively, to 50% or 80% of the package rate. This alternative licensing arrangement, however, applies arbitrarily, without regard to the particular patent or patents involved or to the stature of the alleged inventions covered thereby. Further, this alternative licensing arrangement is available only for radio broadcast receivers of sound and/or monochrome television; no such reduction from the package rate is available with respect to color television, and no such limited license at a royalty rate below the package rate affords the licensee any protection against the assertion by plaintiff of any of plaintiff's 400-odd patents except the one or two patents specifically embraced in such limited license. The evident purpose and practical result of plaintiff's policy is unlawfully to coerce defendant and other manufacturers into accepting licenses under an unwanted package of more than 400 patents, as the only means of avoiding the harassment and expense of infringement litigation. In short, plaintiff, as a conscious corporate policy, refuses to bargain in good faith with defendant or other manufacturers relative to the royalty rates and other licensing terms applicable to individual patents in plaintiff's collection. In furtherance of the above-described policy of unlawful coercion, patent misuse, and illegal extension of its patent monopolies,
22 plaintiff tendered to defendant its so-called "standard license," informed defendant of its licensing policies as above described, asserted that defendant was infringing at least four or more of the patents in plaintiff's package, and informed defendant that, unless the standard license were entered into, infringement action or actions would be initiated on one or more of the patents in plaintiff's package. Defendant informed plaintiff that it was not infring-

ing any valid patent rights of plaintiff and refused to enter into the standard license. Thereupon, plaintiff served defendant with a notice of infringement and initiated the instant action shortly thereafter.

13. Plaintiff has entered into international agreements and cartel arrangements with domestic and foreign companies constituting a combination and conspiracy in restraint of trade between the United States, on the one hand, and Canada and other countries of the world, on the other hand, in violation of the Sherman Act. (United States Code, Title 15, §§ 1 and 2). Pursuant to such agreements, combination, and conspiracy, plaintiff and its co-conspirators have set up pools of patents in Canada, Great Britain, Australia, countries in continental Europe, and other areas foreign to the United States, for the purpose and with the effect of unlawfully dividing the market areas of the world into exclusive territories parceled out among the conspirators, controlling the manufacture, use, and sale of radio and television apparatus in such foreign countries, and preventing the importation of said apparatus into such countries from the United States by defendant and other United States manufacturers not parties to the conspiracy. Pursuant to the aforesaid combination and conspiracy, plaintiff and its co-conspirators, through their aforesaid patent pools and international cartels, have refused to license radio and television apparatus or to permit importation of such apparatus from the United States into Canada, Great Britain, Germany, Scandinavia, Australia, and other countries under threat of ruinous patent litigation against distributors and purchasers of such apparatus. In carrying out such activities, plaintiff and its co-conspirators have employed the inventions, including the alleged invention covered by the patent here in suit, which are the subject of plaintiff's so-called standard license described in Paragraph 12 hereof, and which are the subject

of plaintiff's patents asserted against defendant by plaintiff and its co-conspirators, both in the United States and abroad, for the purpose and with the effect of restraining and preventing defendant and other manufacturers of radio broadcast receivers of sound and television from engaging in foreign commerce in such products. By reason of plaintiff's above-described activities in violation of the Sherman Act, plaintiff comes into this Court of equity with unclean hands and is therefore barred from receiving any relief in this action.

24 Wherefore, defendant prays that the complaint herein be dismissed for want of equity, that judgment be entered against plaintiff in defendant's favor for costs and attorneys' fees as provided by law, and that defendant have such other and further relief as justice may require.

Zenith Radio Corporation,
By Casper W. Ooms,
Dugald S. McDougall,
135 So. LaSalle Street,
Chicago 3, Illinois,
Attorneys for Defendant.

Of Counsel:
Thomas C. McConnell,
Philip J. Curtis,
134 So. LaSalle Street,
Chicago 3, Illinois.

Francis W. Crotty,
Zenith Radio Corporation,
6001 W. Dickens Avenue,
Chicago 39, Illinois.

68 IN THE UNITED STATES DISTRICT COURT
* * (Caption—59-C-1847) * *

PLAINTIFF'S ANSWERS TO CERTAIN OF DEFENDANT'S INTERROGATORIES SERVED APRIL 11, 1961.

Plaintiff, Hazeltine Research, Inc., by L. B. Dodds, its President, hereby makes answer to certain of Defendant's Interrogatories served on Plaintiff's attorney on April 11, 1961, namely, numbers 1 to 8, incl., 10(a), 10(b), 10(c), and 11 to 28, inclusive (formal objections having been filed to Interrogatories numbers 9 and 10(d)), such answers being furnished voluntarily without prejudice to the relevance of them or any of them and such answers being limited to matters within the knowledge of the officers of Plaintiff, Hazeltine Research, Inc., or found in its records or within the knowledge of the officers of Hazeltine Research, Inc., who are also officers of its parent company, Hazeltine Corporation, or in the records of Hazeltine
69 Corporation, in each case the information being furnished through the calendar year 1960:

* * * * *

76 Foreign Situation.

Interrogatories 13 to 28, inclusive, relate to licensing activities under foreign patents corresponding to the U. S. patents owned by Plaintiff. Plaintiff owns no foreign patents and has no foreign licensing activities.
77 However, rather than engage in procedural fencing, Plaintiff has obtained from its corporate affiliate, Hazeltine Corporation, and voluntarily furnishes herewith such answers to these Interrogatories as are within the knowledge of the cognizant officers of Hazeltine Corpora-

tion, or are available in that company's records and, since Plaintiff has no subsidiary companies the answers given below, where appropriate, are in terms of Plaintiff's corporate affiliate, Hazeltine Corporation.

"13. With respect to the patent in suit, state whether or not foreign patents covering the invention have issued and list all the following as to each such foreign patent that has issued:

(a) country where issued,

(b) patent number and title,

(c) record owner or owners."

Answer: There are listed below the foreign patents in question:

(a) Country	(b) Patent No. and Title	(c) Record Owner
Argentina	98,773 Automatic-Contrast-Control System for Television Apparatus	Hazeltine Corporation
Australia	139,522	Neutrodyne Proprietary, Ltd.
Austria	185,856	Hazeltine Corporation
78		
Belgium	470,657 498,563	Hazeltine Corporation
Canada	487,448	Hazeltine Corporation
Denmark	75,969	Svenska Aktiebolaget Gasaccumulator
Finland	23,766 25,673	Svenska Aktiebolaget Gasaccumulator
France	941,302 Ad. 60,782	Hazeltine Corporation
Great Britain	623,431	Hazeltine Corporation
Hungary	138,910 141,922	Hazeltine Corporation
Italy	429,415	Svenska Aktiebolaget Gasaccumulator
Norway	79,646 83,116	Svenska Aktiebolaget Gasaccumulator
New Zealand	95,721	Neutrodyne Proprietary, Ltd.
Sweden	122,334 138,374	Svenska Aktiebolaget Gasaccumulator
Switzerland	256,730 289,908	Hazeltine Corporation

"14. List and identify all persons, companies and corporations which now have or have had the right to grant licenses under each of said foreign patents, and fully describe such right.

(a) Fully describe the terms and conditions of licenses issued by said companies or individuals or supply a copy of the form of license or licenses used.

79 (b) Have said companies or individuals granted licenses under patents owned or controlled by companies other than plaintiff or subsidiaries of plaintiff?

(c) Fully describe the licenses referred to in (b) or supply copies of same.

Answer: The following companies have the right to grant the licenses in question:

Country	Company having Licensing Rights	(a) Terms and conditions of Licenses Granted	(b) (c) Licenses granted under Patents other than those of Plaintiff and Affiliate
Argentina	Ad. Auriema, Inc.	None Granted	None granted
Finland Norway Sweden Austria Belgium France Hungary Switzerland	Svenska Aktiebolaget Gasaccumulator	Note 1 below	Not known
Canada	Canadian Radio Patents Limited	Not known	Not known
Great Britain	General Electric Company Limited	Note 2 below	Note 2 below
Australia New Zealand	Neutrodyne Proprietary, Ltd.	Note 3 below	Note 3 below

80

Note 1.

Of the licenses issued by Svenska, there can be found only copies of the following, copies of which are attached: Telsa, Prague, Czechoslovakia—dated July 1, 1947 (Exhibit C); Philips S. A. Belge re European part of Belgium and Luxembourg (Exhibit D); N. V. Philips' Gloeilampenfabrieken re Scandinavia and remaining countries of Europe with the exception of Great Britain and Northern Ireland (Exhibit E).

Hazeltine Corporation has been informally advised that a number of licenses under its patents, including French Patents Nos. 941,302 and Ad. 60,782, have been issued in France but has no copies of, nor knowledge of

"14(d) For each year, from 1951 to date, state the amount of royalties paid to plaintiff or to any of its subsidiary companies and identify the company or com-
82 panies which paid said royalties together with the agreements pursuant to which said payments were made."

Answer: The information requested is not obtainable. The only royalties received by Hazeltine Corporation under its foreign patents during the period in question have been from the licenses in France referred to above, from the General Electric Company Limited with respect to Great Britain and from Canadian Radio Patents Limited with respect to Canada. Under none of these licenses or arrangements is there any segregation of royalty income with respect to any particular patent.

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the terms of such licenses. However, the invention of the patent in suit is not of advantage in television receivers designed to receive a positively modulated signal, while most of the European countries have standardized on such a signal.

Note 2.

The General Electric Company Limited has included the Hazeltine British patents as well as its own British patents in several of the so-called British Radio and Television Patent Pools. There can be found copies of only the A. 6, A. 7 and A. 8 Pool Agreements and Supplements which are attached as Exhibits F, G and H. The British Pools have, in

81

turn, granted licenses to the British radio and television manufacturers. There can be found only the A. 5, A. 6 (and supplement), A. 7S and A. 7T (and 2nd edition of each) Pool Licenses, copies of which are attached as Exhibits I, J, K, L, M, and N.

Note 3.

Neutrodyne Proprietary, Ltd., has from time to time included Australian and New Zealand patents of Hazeltine origin in the Australian and New Zealand Patent Pools (Australian Radio Technical Services—A. R. T. S.). There can be found only a copy of the Australian Radio Technical Services & Patents Co. Ltd. and Neutrodyne Proprietary Ltd.—dated April 12, 1934, a copy of which is attached as Exhibit O.;

There can be found only copies of the following licenses issued by A. R. T. S. to Australian radio and television manufacturers, copies of which are attached as Exhibits P, Q, R and S:

Australian Patent License No. 1 issued 1934 (Exhibit P)
Australian Patent License No. 5 issued 1951 (Exhibit Q)
Australian Patent License No. 6 issued 1953 (Exhibit R)
Australian Patent License No. 6B issued 1953 (Exhibit S)

"14(e) As to infringement litigation involving the foreign counterparts of the patent in suit,

i. Identify each suit, the parties and the parties sued on;

ii. What was the outcome of the suit;

iii. Describe the judgment entered;

iv. State who bore or shared in the expenses of the suit;

v. State the amount or amounts of money paid directly or indirectly to plaintiff or to any of its subsidiaries as a result of said litigation."

83 Answer: Hazeltine Corporation has no record of any infringement litigation involving foreign counterparts of the patent in suit.

"15. List and identify all contracts, assignment or other documents by which the right to grant licenses referred to in Interrogatory No. 14 was acquired and all agreements, arrangements and understandings relevant thereto. (If any of said agreements, arrangements or understandings were oral, describe them fully.)"

Answer: With respect to Finland, Norway and Sweden, the right to grant licenses under the respective corresponding patents in those countries was granted to Svenska Aktiebolaget Gasaccumulator by an agreement dated July 25, 1946 and effective to December 31, 1960; this agreement was extended by a letter agreement dated May 26, 1950 to December 31, 1955; and further extended by a letter agreement dated December 4, 1953 to December 31, 1960.

With respect to Austria, Belgium, France, Hungary and Switzerland, the right to grant licenses under the respective corresponding patents in those countries was granted to Svenska Aktiebolaget Gasaccumulator by an agreement dated July 25, 1946 and effective to December 31, 1950; this agreement was extended by a letter agreement dated May

26, 1950 to December 31, 1955; and further extended by a letter agreement dated December 4, 1953 to December 31, 1960.

84 With respect to Great Britain, license rights were granted to General Electric Company, Limited by an agreement dated April 6, 1939, extended and modified by agreements dated July 24, 1948, and November 10, 1948, which were superseded by an agreement dated February 27, 1953, extending to December 31, 1957, and by a supplemental agreement dated November 14, 1957, extending to June 30, 1960.

With respect to Canada, the license rights referred to were granted to Canadian Radio Patents Limited by an agreement dated July 2, 1943 for a term of ten years renewable for a further period of ten years.

With respect to Australia and New Zealand, the license rights referred to were granted to Neutrodyne Proprietary, Ltd., by an agreement dated September 11, 1928, which is still in effect.

With respect to Argentina, the license rights referred to were granted to Ad. Auriema, Inc. of New York by an agreement dated October 28, 1953.

"16. As to each patent referred to in Interrogatory No. 13, describe fully the consideration which passed in connection with the acquisition of the rights referred to in Interrogatory No. 14, and state in each case who paid or shared in the cost of such acquisition, listing the exact consideration borne by each party."

85 Answer: No consideration passed in connection with the acquisition of the foreign patent rights by Svenska Aktiebolaget Gasaccumulator, General Electric Company Limited, Canadian Radio Patents Limited, Neutrodyne Proprietary, Ltd., or Ad Auriema, Inc.

"17. List all individuals and companies which participated, directly or indirectly, in the formation of Canadian Radio Patents, Ltd."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"18. Give full details concerning the organization, management and corporate structure of Canadian Radio Patents, Ltd."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"19. List the directors of this company from 1951 to date and set forth any connection or affiliation each of such directors have or have had with plaintiff, or with any American or foreign subsidiary of plaintiff."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

86 "20. List all companies or individuals which hold or have held stock in this Canadian company and state the amount of stock held by each such individual or company."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"21. List and identify all contracts, agreements or arrangements of any sort, oral or written, which plaintiff or any of its subsidiaries has or has had with Canadian Radio Patents, Ltd."

Answer: The information requested is included in the Answer to Interrogatory No. 15, supra.

"22. List all radio and television manufacturers which have been or are licensed, under patents of plaintiff, to manufacture or sell radio and/or television home receivers or tubes in Canada by Canadian Radio Patents, Ltd."

Answer: The only information with respect to this request which can be found comprises a list supplied to Hazeltine Corporation by Canadian Radio Patents, Ltd., dated September 1, 1950, copy of which is attached as Exhibit T.

87 "23. State generally the terms and patent coverage of said licenses or, if a standard license form has been used, supply a copy of said standard form."

Answer: The only information which can be found is a copy of a license supplied to Hazeltine Corporation by Canadian Radio Patents Ltd. on or about June 6, 1960, copy of which is attached as Exhibit U.

"24. If a standard form has been used, describe fully any variations from said form which have been made in particular instances and state the reasons and considerations for such variations."

Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"25. Did plaintiff ever issue a patent license for the manufacture, use or sale of radio and/or television home receivers of tubes directly to any manufacturer, importer or others in Canada, England, France, Germany, Austria, Holland or any of its possessions, Norway, Denmark, Sweden, Australia and New Zealand? If so, identify the licensee and fully describe the terms and duration of such license or supply a copy of same."

88 Answer: Plaintiff's affiliate, Hazeltine Corporation, has issued the following patent licenses covering the manufacture and sale of radio and/or television home receivers directly to manufacturers, importers or others in the countries inquired about as follows:

Canada

1. Stromberg-Carlson Television Manufacturing Company of Canada, Ltd., dated July 1, 1934; term, 5 years, extended to June 30, 1942; royalty 1¼% and 2½%, applicable to various categories; terms and scope of license essentially the same as the then current United States license form.

2. Northern Electric Company Limited, dated July 1, 1935; term, 5 years, extended to June 30, 1943; royalty 1¼% and 2½% applicable to various categories; terms and scope of license essentially the same as the then current United States license form.
3. Rogers-Majestic Corporation Limited, dated January 1, 1935; term, 5 years but extended by various supplements to June 30, 1943; royalty 1¼% and
89 2½% applicable to various categories; terms and scope of license essentially the same as the then current United States license form.
4. Philco Products Ltd., dated February 5, 1938; term, 5 years, exclusive license (except for licenses 1, 2 and 3 above) with the right to sublicense, field, sound broadcast receivers; royalty 2% with a minimum of $25,000 and a maximum of $50,000 per year.

England

1. Licenses were granted by Hazeltine Corporation's British subsidiary, Hazelpat Ltd., to Philco Radio and Television Corporation of Great Britain Ltd., and Majestic Electric Company Ltd., about 1933, but no details of such licenses nor copies of the licenses can be found.
2. Royalty free licenses were granted to the General Electric Company Limited in conjunction with the grant of rights referred to in Answer to Interrogatory No. 15. Such licenses terminated December 31, 1952.

90 *France, Germany, Austria, Holland, Norway, Denmark and Sweden.*

Various licenses have been issued by Hazeltine Corporation to manufacturers in such countries commencing about 1932. These licenses have been negotiated by its European

representative, Svenska Aktiebolaget Gasaccumulator or, prior to World War II with respect to Continental Europe other than the Scandinavian countries, by Hazeltine-Patent-Verwaltung. The only copies of such licenses as to which information is available are referred to in Note 1 to the Answer to Interrogatory No. 14, supra.

Australia and New Zealand

Patents corresponding to the Hazeltine United States patents in these two countries are not owned by Hazeltine Corporation but by Neutrodyne Proprietary Ltd. Consequently, no licenses have been issued under such patents by Hazeltine Corporation.

"26. Did plaintiff at any time license any American manufacturer or seller of American made radio and/or television home receiver sets or tubes to export from the United States and sell American made radio and/or television home receiver sets or tubes in any of the following countries under plaintiff's patents in force in said countries: Canada, England, France, Germany, Austria,
91 Holland or any of its possessions, Norway, Denmark, Sweden, Australia and New Zealand. If so, fully describe each such license or supply a copy of same."

Answer: No records can be found which indicate that any licenses granted by Plaintiff to such American manufacturer or seller of American made receivers explicitly granted a license under corresponding foreign patents owned by Hazeltine Corporation. However, no record can be found that Plaintiff ever refused to grant such a license or that such a license has ever been requested. None of the licenses granted by Plaintiff to American manufacturers of radio and/or television receivers has restricted the exportation of licensed apparatus in any way. Moreover, the European representatives of Hazeltine Corporation referred to in the Answer to Interrogatory No. 14 have con-

sistently offered to license importers of American receiver manufacturers and have done so in many instances, but no copies of such licenses and details with respect thereto can be found.

"27. Is it, or has it, been the policy of Canadian Radio Patents, Ltd. not to license American radio and/or television manufacturers for the unrestricted importation into Canada from the United States of American made radio and/or television home receiver sets or tubes for resale in Canada?"

92 Answer: Neither Plaintiff nor its affiliate, Hazeltine Corporation, has any knowledge of the matter inquired of.

"28. If such is or has been the policy of this organization, state who participated in the formation of that policy and when and where said policy was adopted."

Answer: Neither Plaintiff nor its affiliate Hazeltine Corporation, has any knowledge of the matter inquired of.

L. B. Dodds.

State of New York }
County of Queens } ss:

On this 26th day of May, 1961, there personally appeared before me, a Notary Public in and for the County and State aforesaid, L. B. Dodds who, being duly sworn, deposed and said that he is President of Hazeltine Research, Inc., Plaintiff in the above-entitled Action, and that the foregoing Answers to certain of Defendant's Interrogatories subscribed to by him are true to the best of his knowledge and belief.

Alice M. Ressler,
(Seal) *Notary Public.*

My commission expires March 30, 1962.

Service of a copy of Plaintiff's Answers to certain of Defendant's Interrogatories is acknowledged this 29th day of May, 1961.

Dugald S. McDougall,
Attorney for Defendant.

287 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

AFFIDAVIT OF L. B. DODDS IN SUPPORT OF PLAINTIFF'S MEMORANDUM ON OBJECTIONS TO INTERROGATORIES.

(Filed June 21, 1961.)

State of New York }
County of Queens } ss:

L. B. Dodds, being duly sworn, deposes and says that:

1. He is now and has been since the organization of Plaintiff in 1946 an officer of that Company and is now and has been since 1939 (except for an absence during part of 1944 and 1945) an officer of Plaintiff's parent Hazeltine Corporation.

2. He has searched and reviewed the files and records of Plaintiff and its parent, Hazeltine Corporation, to locate the information and documents requested by Defendant's Interrogatories to Plaintiff filed on or about April 11,
288 1961, and has prepared Plaintiff's Answers filed May 29, 1961, to all of such Interrogatories save Nos. 9 and 10(d).

3. He determined that during the period 1951 through 1960 some 230 license agreements relating to radio and/or television receivers were in effect with various U. S. manufacturers of such equipment. All of those licenses (with the exception of a single license to General Electric Company referred to in Plaintiff's Answers) were, as a matter of mechanical convenience, issued on a printed license form which varied slightly from time to time in accordance with variations in the terms and scope of the licenses offered by Plaintiff to the radio and television industry. As a result of the practice of using printed license forms, it

became necessary in the case of nearly every licensee to issue one or more amendatory or "side letters" to take care of particular circumstances and the particular nature of that company's business. These "side letters" covered a wide range of contractual clauses, there generally being several, and in some cases a large number of such letters issued in connection with each license. It is estimated that the total number of these "side letters" issued by Plaintiff in connection with the aforesaid 230 licenses is of the order of 1,000 or more, the great preponderance of which covered miscellaneous formal matters and matters peculiar to the business of a licensee.

L. B. Dodds.

Subscribed and sworn to before me this 31st day of May, 1961.

Alice M. Ressler,
Notary Public.

My commission expires March 30, 1962.

317 UNITED STATES DISTRICT COURT,

Northern District of Illinois.

SUBPOENA DUCES TECUM.

The President of the United States of America.

To: Hazeltine Research, Inc., by its Secretary
5445 W. Diversey Avenue
Chicago, Illinois

—Greeting:

We Command You, that all business and excuses being laid aside, you and each of you attend at the offices of McConnell, Paschen & Curtis, 134 S. LaSalle Street, Chicago 3, Illinois, on the 19th day of January, A.D. 1962, at 10:00 o'clock in the forenoon in Room 1110 of said offices, to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein Hazeltine Research, Inc. is plaintiff and Zenith Radio Corporation is Defendant, on the part of said Zenith Radio Corporation. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, the documents described in the schedule attached hereto and made a part hereof which are in the possession, custody or control of Hazeltine Research, Inc., or any of its subsidiaries or controlled companies, or the officers, directors, agents, representatives, employees or counsel of any of them.

314 Definitions.

The term "documents" includes all writings, and/or records of any kind, including, but not limited to, the originals and all copies and drafts of contracts, agreements, and amendments thereto, correspondence, cablegrams, ra-

diograms, telegrams, memoranda, reports, recordings and other transcription of telephone and/or other conversations, conferences and/or meetings, affidavits, books of account, transcripts of testimony in judicial or administrative proceedings, minutes of meetings, including directors' meetings and committee meetings, diaries, intra-office communications, logs, advertisements, scrap-books, press and publicity releases, reports to stockholders and/or to governmental bodies, records, reports and/or summaries of negotiations and all other writings of every kind, including documents passing from or to or between Hazeltine Corporation and Hazeltine Research, Inc. or their domestic or foreign subsidiaries or affiliated or controlled companies, or the officers, or representatives or any of them, and any documents passing from or to or between said companies and foreign companies, or the officers, directors, agents, representatives, employees or counsel of any of them.

The term "Hazeltine" as used herein includes Hazeltine Corporation, Hazeltine Research, Inc. and any and all domestic or foreign subsidiaries and/or affiliated companies under the control of Hazeltine Corporation or Hazeltine Research, Inc.

The term "patent" as used herein means any patent usable in the manufacture or sale of radio and television apparatus or any constituent part thereof.

Subpoena Duces Tecum.

1. All documents referring or relating to foreign patents or foreign patent licenses or rights of any kind covering any invention which is the subject of any United States patent licensed under the standard license agreements issued or proffered by Hazeltine to any licensee or prospective licensee in the United States at any time during the life of the patent in suit.

2. All communications between Hazeltine and any company or person having licensing rights under foreign patents of Hazeltine, referring to or relating to the actual or proposed licensing of any foreign patent on inventions which are the subject of any United States patent licensed under any Hazeltine standard license agreement issued or proffered in the United States at any time during the life of the patent in suit.

3. All documents referring or relating to the following foreign patent licensing organizations and/or any of their patent pooling and/or licensing activities:

315 Canadian Radio Patents Ltd.

Australian Radio Technical Services and Patents Co., Ltd.

British radio and television patent pool*

Telefunken G. M. B. H.

N. V. Philips Gloeilamphenfabrieken

Any other foreign patent pool or company or organization having licensing rights under any of the patents of Hazeltine and any other patentee

and all communications between Hazeltine and/or any of its officers, agents, representatives or counsel and any of said foreign patent licensing organizations, and/or any of the officers, agents, representatives or counsel of any of said organizations.

4. All documents concerning the creation, administration, operation, purposes and/or policies of any and all patent pools or licensing organizations having rights in respect of patents of Hazeltine or foreign patents covering inventions of Hazeltine, including without limiting the generality of the foregoing, Canadian Radio Patents Ltd., Australian Radio Technical Services and Patents Co., Ltd., the British radio and television patent pool*, Telefunken G. M. B. H. and N. V. Philips Gloeilamphenfabrieken.

5. All documents referring or relating to the issuance or denial of any license to import or export under any foreign patent of Hazeltine.

6. All documents relating to the assertion against Zenith Radio Corporation or others engaged in the manufacture or sale of radio and/or television apparatus, and/or constituent parts thereof, in the United States of America, Canada and/or any other country of any foreign or domestic patents or patent rights owned or licensed by Hazeltine.

7. All documents relating or referring to policies and/or practices of Hazeltine and/or of any person having a right to extend licenses under any patent rights of Hazeltine in the United States of America and/or any foreign country in respect of any actual and/or proposed license of the export and/or import of radio and/or television apparatus and/or constituent parts thereof.

8. All documents relating or referring to any request or inquiry, by any person or company manufacturing 316 and/or selling radio and/or television apparatus, for a license under some but less than all of the patent rights owned by Hazeltine or in which Hazeltine has, or at any time during the life of the patent in suit has had, a beneficial interest.

9. All documents relating or referring to package licensing of Hazeltine patent rights, together with all copies, drafts, and vouchers relating to the said documents, and all other documents, letters, and paper writings whatsoever, that can or may afford any information or evidence in said cause. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

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* Referred to in note number 2 to plaintiff's answer to defendant's interrogatory 14.

To the Marshal of the Northern District of Illinois to execute and return in due form of law.

Ray H. Johnson,

Clerk,

By: William E. Kelley, Jr.

(Seal) *Deputy Clerk.*

Dated: December 19, 1961.

318 Served this writ on the within named Hazeltine Research, Inc., a corporation, by delivering copies thereof to W. O. Divingard, Vice Pres. an agent, of said corporation, this 2nd day of January, A.D. 1962.

The president of said corporation not found in my district.

J. N. Tierney, U. S. Marshal by Mac Fisher, Deputy.

1	Service	$ 50
24	Mileage	$ 240
	Total	$ 290

321 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—59-C-1847) • •

AFFIDAVIT OF L. B. DODDS IN SUPPORT OF PLAINTIFF'S MOTION TO QUASH SUBPOENA DUCES TECUM.

State of New York }
County of Queens } ss:

L. B. DODDS, being duly sworn, deposes and says:

1. That he is counsel for Hazeltine Research, Inc., Plaintiff herein, and that since its organization in 1946 he has been, and is now, a Director of that Corporation and that from 1946 until 1960 he was an Executive Officer of that Corporation and completely familiar with its operations.

2. That Hazeltine Research, Inc., and its predecessor, Hazeltine Corporation, have for more than thirty-five years been engaged in research, development engineering, design and testing and consulting services in the radio and television field, certain of these activities being located
322 at its laboratory in Chicago; that it derives its income to support these activities solely from royalties on patents flowing from such research and development work, its policy being to license any and all responsible manufacturers of radio and television apparatus at royalty rates which, for many years, have been of the order of 1 percent; that it does not manufacture or sell any products, although its parent, Hazeltine Corporation, is engaged in supplying complex electronic equipment to the Armed Forces; and that its average gross income for the five year period ending 1961 has been less than $750,000 per year.

3. That there is attached hereto as Exhibit A a copy of the Subpoena Duces Tecum served by Defendant on

January 2, 1962, on Edward H. McDermott, Secretary of Plaintiff.

4. That the scope of the "Definitions" forming a part of the Subpoena is so sweeping that it includes documents dealing with many matters not involved in any of the issues of this case, for example, documents dealing with the technical aspects both of the patent in suit and of several hundred others of Plaintiff's patents wholly unrelated to any issues in this case, such as patents relating to devices, components and systems having solely military application. Such "Definitions" are also so broad as to include routine proceedings in the filing and prosecution of
323 all of the several hundred foreign patents of Plaintiff's parent, Hazeltine Corporation, relating to many inventions not in any way involved in any of the issues in this case.

5. That paragraphs 1 and 2 of the Subpoena require the production of all documents relating to unexpired foreign patents corresponding to United States patents which were not expired at the time of the grant of the patent in suit, namely, April 3, 1951, which foreign patents date back as early as 1933, some twenty-eight years past and long prior to any activities of Plaintiff or its related companies under the patent in suit.

6. That the "Definitions" forming a part of the Subpoena, as well as paragraph 3 of the Subpoena, require the production of communications with counsel, which are privileged.

L. B. Dodds

Sworn to and subscribed before me this 8th day of January, 1962.

Alice M. Ressler,
Notary Public.

No. 41-8549820 Qualified in Queens County.
Commission Expires March 30, 1962.

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS.

had in the above-entitled cause before the Hon. Hubert L. Will, one of the judges of said court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Wednesday, July 25, 1962, at the hour of 10:00 o'clock a.m.

Appearances:

Clemens Hufmann, Esq. (20 North Wacker Drive, Chicago, Illinois) and E. A. Ruestow, Esq. (59-25 Little Neck Parkway, Little Neck 62, New York), on behalf of plaintiff;

Messrs. McConnell, Paschen & Curtis (134 South LaSalle Street, Chicago, Illinois), by Thomas C. McConnell, Esq. and Philip J. Curtis, Esq., on behalf of defendant.

2 The Clerk: 59 C 1874, Hazeltine Research, Incorporated *v.* Zenith Radio Corporation, plaintiff's motion to compel defendant to answer plaintiff's Interrogatory No. 10.

Mr. Hufmann: I represent the Hazeltine Corporation. We were before your Honor on Friday last week, and the problem is a discovery problem with which Mr. Ruestow is familiar. He was recognized by Judge Austin in this case. He is a member of the New York Bar and will present the argument.

The Court: Let me first—

Mr. McConnell: If the Court please—

The Court: Let me first greet Mr. Ruestow. Is there anything you want to say before Mr. McConnell tells me what the truth is in the case?

Mr. Ruestow: It is my motion, and I think I would like to have my story heard first.

The Court: Proceed.

Mr. McConnell: I was going to suggest this, if the Court please—

The Court: Unless you are going to concede.

Mr. McConnell: No, I am not going to concede anything, but it is going to take me quite some time to
3 develop these facts, and I thought it might be more convenient for everybody if we passed it to the end of the call.

The Court: Well, if it is going to take you quite some time, you are going to do it in writing.

Mr. McConnell: Well, it will. I can't do this in two or three minutes.

The Court: All right. This will be taken under Rule 13 then. I thought it could be disposed of expeditiously.

Mr. Ruestow: I think it can.

Mr. Hufmann: May I mention the same problem was raised when we were here on Friday, and at that time somebody expressed the view that briefing was not necessary because no legal problems were involved.

Mr. McConnell: I think that is true.

The Court: Mr. McConnell says he is going to go on at some length as to the factual reasons for his opposition to answering this interrogatory. Then I am not disposed—I suspect if that happens, we are going to get into affidavits, perhaps, and what else?

4 Mr. McConnell: Counter-affidavits.

The Court: And that is the kind of thing you do by paper and not by mouth.

Mr. Ruestow: Mr. McConnell might have given us some warning about this because I made a trip from New York for this.

The Court: I certainly agree, and I apologize for the

fact I am not going to hear you this morning, but it doesn't seem to me it will serve any purpose if this is going to require perusal and examination of affidavits, counter-affidavits, and all the rest, in chambers. Judge Austin may as well look at the whole package at one time.

I am very sorry you came from New York. I was under the impression when I set this that it could be disposed of on brief oral argument; that there were no legal questions.

Mr. McConnell was not here when this was projected, so I didn't know what his intentions were. I had the impression it would not be an extensive or extended matter, but he now tells me it is or will be.

Mr. McConnell: It took me three years to develop these facts.

5 The Court: I take it the oral argument would be briefer than that.

Mr. McConnell: Yes, but I can't do it in three minutes.

Mr. Ruestow: Affidavits have been in for a week from our office, and Mr. McConnell submitted an affidavit this morning, which I am prepared to accept as in the record. Does he mean he wants to submit more?

Mr. McConnell: No. I want to tell the court what the facts are that you are asking about and what the whole factual situation is, and I can't do it as a motion of course. If the case can be passed to the end of the call—

The Court: I am in the middle of a trial.

Mr. McConnell: I know. I know your Honor's situation, but I know mine too.

Mr. Ruestow: I think it is much simpler—

Mr. McConnell: It isn't a mater that can be disposed of summarily here. I want a chance to be heard on it.

Mr. Ruestow: You Honor, I think—

Mr. McConnell: A lot is involved in this motion. There is more to it than meets the eye.

6 Mr. Ruestow: May I comment on that, your Honor?

The Court: Yes, Mr. Ruestow.

Mr. Ruestow: The motion is, in my mind, far simpler than Mr. McConnell indicates. We are asking them simply to identify the parts of a mountain of documents that they know all about that identify us with this conspiracy they charge us with. So it is simply a matter of who is going to identify the proper parts of this mountain of evidence that they picked up against other people, RCA, G. E., and others, not us, and who is going to do the work of finding out which is the part that is pertinent to our alleged participation in the conspiracy. Are we to spend two months at it or are they? I think it is a simple one.

The Court: I take it that you also want them to be bound by the identification of these documents, in the nature of a Rule 34 production, and if you don't produce, that is it.

Mr. McConnell: That is right.

The Court: Isn't that correct, Mr. Ruestow?

Mr. Ruestow: That is correct, but that is not the issue today.

The Court: I don't say that. I just want it to be understood.

Mr. Ruestow: The issue today is are they going to identify them?

The Court: Yes, I understand.

Mr. Ruestow: If they will identify them, they can take as long as they want to find them.

The Court: Why should you, just very briefly, Mr. McConnell, why should you not, having alleged the conspiracy, identify the documents upon which you rely to support that allegation?

Mr. McConnell: Your Honor, we have identified all of these documents. We have given them a list of them. We have made them available. We have put them in a separate room where they can come and see them.

Now, there isn't a single document in that group that we put in that is irrelevant or immaterial to this conspiracy. I spent three years developing this.

The Court: Your answer to the interrogatory is that all documents are in Room so and so, period.

Mr. McConnell: We collected them, your Honor, and got them there and gave them access to them to come
8 and look at them.

The Court: Mr. Ruestow, what Mr. McConnell says, if I understand him, is that in answer to your interrogatory No. 10, all the documents have been assembled at some identifiable place.

Mr. Ruestow: It is just not so, your Honor.

Mr. McConnell: He doesn't want to read them. He has been there and he doesn't want to read them.

Mr. Ruestow: That is true, your Honor. I do not want to read two months of depositions directed against other people.

The Court: I take it that Mr. McConnell has answered your interrogatory by saying here are the documents. All of these, he just said, are relevant and material to the issue of conspiracy. Now you say that is not a bona fide response.

Mr. Ruestow: That is correct.

The Court: You would then come in with examples of documents which are—

Mr. Ruestow: I have, your Honor.

The Court: I don't see any.

Mr. Ruestow: I have an affidavit in the file.

The Court: The affidavit doesn't identify docu-
9 ments in this room which you say are not relevant.

Mr. Ruestow: It does. It identifies 2,250 pages of depositions given to me by Mr. McConnell, and I spent a week's time going through them, six days in fact, going through them and I found—

The Court: Forty references, forty casual references to Hazeltine, the plaintiff.

Mr. McConnell: May I answer that?

Mr. Ruestow: Now that is not a fair response to our needs.

The Court: I think I would have to look at the references before I could conclude that.

Mr. McConnell: If the Court please, I have a very short answer to that. We allege and are prepared to prove that as a matter of fact their own documents which they have produced prove, not to mention the ones we have produced for their examination, show that they are in a conspiracy which is worldwide and is grounded in patent pools existing all over Europe. I went all over Europe and took these depositions; and in each one of them these gentlemen are in it. Now every single document that goes to prove that conspiracy doesn't mention the Hazeltine Corporation, but once they are in it, all that evidence which is relevant to the conspiracy, they as a co-conspirator are bound by it, and we intend to introduce it on the issue of misuse in this case.

Now counsel is trying to say either that the only thing we have a right to rely on is something that specifically mentions Hazeltine by name, which isn't the law, as your Honor well knows, or that we have got to go through all the mass of documents which we have already gone through to show are relevant to a conspiracy issue and pick out the ones which he says are material to the conspiracy issue.

Now, that isn't the law.

The Court: Mr. Ruestow, this is the first time in some long time that I have had anybody complaining about having too much produced on discovery. This may be a great burden upon you, but Mr. McConnell says all of these documents are produced in response to Interrogatory

No. 10, and in his judgment they are all relevant. You know how broad the definition of relevant is for discovery purposes. They may not be relevant and admissible
11 on a trial, but most of the time I am saying to people the opposite, you know, give him those documents. You may object to their admission on the ground of relevance when the trial comes up, but for purposes of discovery they are relevant.

I see no reason to change the standard, the criteria, when somebody says he is giving me too much, giving me things which I don't think are relevant even though he thinks they are. If I understand Mr. McConnell, he is saying all these documents which he has tendered are relevant, and he is saying particularly in a conspiracy is the scope of relevancy broad because it doesn't have to refer to the alleged particular co-conspirator if it is done by another co-conspirator in furtherance of the conspiracy. If you establish the existence of a conspiracy and the participation in it of the one alleged named conspirator, then it is relevant to him and you have the problem at that point, says he, of defending not only against what you did but what everybody else in the conspiracy did.

You had better look at these documents because
12 you may have to be answering them sometime if he establishes the conspiracy, isn't that true?

Mr. McConnell: That is exactly right.

Mr. Ruestow: That is his idea of the facts.

Mr. McConnell: Let me develop—

Mr. Ruestow: Let me finish.

The Court: I am ready to rule. This is discovery motion. Have you not answered it at all, Mr. McConnell?

Mr. McConnell: I have answered everything. I have listed all the documents. I have given the names of the depositions, who the witnesses are. I have put them in

a room and made them available to this gentleman. His complaint is that he doesn't want to read them.

The Court: You are a victim of prosperity, Mr. Ruestow, but I can't help you because I think for discovery purposes that is a proper response.

The party called on to identify documents says these are all relevant—unless he is clearly sandbagging you and engaging in a tactic, and I say that even a deposition of
2,250 pages which refers to other alleged co-conspira-
13 tors and forty times refers to you isn't a deliberate sandbag.

That is hardly so obviously and clearly irrelevant as to make its tender to you in response to a discovery motion an abuse of the discovery rule. I will deny the motion.

MOTION TO STRIKE PARAGRAPH 13 OF DEFENDANT'S ANSWER.

Now Comes Plaintiff, Hazeltine Research, Inc., and moves under the provisions of Rule 12(f) of the Rules of Civil Procedure to strike paragraph 13 of Defendant's Answer on the ground that it fails to state a legally sufficient defense to the instant Action. Specifically, said paragraph 13 alleges that Plaintiff's parent Company, Hazeltine Corporation, is a party to international patent agreements in restraint of trade, but none of Hazeltine Corporation's international agreements are based in whole or in part on, nor are they related in any way to, United States Letters Patent 2,547,648, which Defendant is charged in this Action to infringe.

Therefore, even if it be assumed, arguendo, that aforesaid international patent agreements of Hazeltine Corporation were in restraint of trade (which is denied)
522 that is an issue having no relation to the simple patent infringement issue of this Action and is not a suffi-

cient legal defense to the Action. To consume five weeks of trial, estimated by Defendant's counsel as required to try this issue, would constitute an intolerable burden on the court and on Plaintiff.

This Motion is based on Plaintiff's Supporting Memorandum and on the attached Affidavit of L. B. Dodds, of counsel for Plaintiff in this Action.

Mason, Kolehmainen, Rathburn & Wyss,
By M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Chicago, Illinois.

Dated: 5/9/63.

Of Counsel:
L. B. Dodds,
E. A. Ruestow,
59-25 Little Neck Parkway,
Little Neck 62, New York.

Philip F. LaFollette,
Tenney Building,
Madison 3, Wisconsin.

524 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

AFFIDAVIT OF L. B. DODDS IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE AND PLAINTIFF'S MOTION FOR LEAVE TO FILE THE SAME.

State of New York, }
County of Queens. } ss.

L. B. Dodds, being duly sworn, deposes and says that:

1. He is of counsel for Plaintiff in the above entitled Action.

2. He has been retained by or employed by Plaintiff's parent Company, Hazeltine Corporation, continuously since 1934 and has been a Vice President of said Hazeltine Corporation continuously since 1939 (except for a period during 1944-1945 when he had no connection with Hazeltine Corporation or any of its affiliates). He also was an officer of Plaintiff, Hazeltine Research, Inc. from its organization in 1946 until June 7, 1961. Since 1946 he has been
525 continuously familiar with the patents and patent licenses of both Plaintiff and its parent Hazeltine Corporation.

3. Plaintiff does not manufacture or market any products but, since its organization in 1946, has been engaged exclusively in extensive research and development activities in the field of radio and television broadcast receivers, both at its own laboratories and, through inter-company agreements, at research divisions of its corporate affiliates. Such research and development activities have resulted in a number of inventions on which United States Letters Patent have been granted. Plaintiff grants licenses under such patents to all United States manufacturers of radio and television receivers at moderate rates of royalty and on a non-discriminatory basis. It has also made available to its licensees technical assistance and testing, measuring and

evaluation services at its laboratories without charge over and above royalties payable under such licenses. Each of said licenses has included the following provision or other provision of like import:

> "Nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any license to Licensee, expressly or by implication, estoppel or otherwise:
>
> * * * * *
>
> (b) "Under any patents of countries foreign to the United States;"

526 4. Prior to 1946 Plaintiff's aforesaid parent, Hazeltine Corporation, engaged in the activities described in the preceding paragraph and since about 1940 has additionally engaged in research development and manufacture in the military electronic field.

5. Since its organization in 1924 the aforesaid Hazeltine Corporation has continuously obtained patent rights on aforesaid inventions in certain foreign countries and has entered into agreements in certain foreign countries to license and promote the use of such patents in their respective countries. None of said agreements has ever granted any rights under United States Letters Patent owned either by Plaintiff or by said Hazeltine Corporation, specifically including patent 2,547,648 in suit.

6. At no time has either Plaintiff or its parent Hazeltine Corporation manufactured or sold radio and television receivers, or either of them, in competition with either the licensees of Plaintiff in the United States or the licensees of Hazeltine Corporation in foreign countries.

L. B. Dodds.

Sworn to and subscribed before me this 7th day of May, 1963.

Alice M. Ressler,
Notary Public, State of New York,
No. 41-8549820, Queens County.

Commission Expires March 30, 1964.

528 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION TO STRIKE PARAGRAPH 13 OF DEFENDANT'S ANSWER.

Statement of the Case.

This is an action for infringement by Defendant, Zenith, Radio Corporation, of Plaintiff's patent 2,547,648—Loughren covering a television receiver circuit. Zenith Radio Corporation publicly claims to be the largest manufacturer of television receivers and is located in Chicago. It is believed the Court can take judicial notice of the general character of Defendant's business.

Plaintiff, Hazeltine Research, Inc., is a small Chicago research and development organization. The nature of Plaintiff's operations is described in the attached affidavit of L. B. Dodds as follows:

529 "Plaintiff does not manufacture or market any products but, since its organization in 1946, has been engaged exclusively in extensive research and development activities in the field of radio and television broadcast receivers, both at its own laboratories and, through intercompany agreements, at research divisions of its corporate affiliates. Such research and development activities have resulted in a number of inventions on which United States Letters Patent have been granted. Plaintiff grants licenses under such patents to all United States manufacturers of radio and television receivers at moderate rates of royalty and on a non-discriminatory basis. It has also made available to its licensees technical assistance and testing, measuring and evaluation services at its laboratories without charge over and above royalties payable under such licenses. Each of said licenses has included the following provision or other provision of like import:

'Nothing herein contained, and no act or acts hereunder, shall be construed as, or result in, conveying any license to Licensee, expressly or by implication, estoppel or otherwise:

* * * * * *

'(b) Under any patents of countries foreign to the United States;' "

Plaintiff's parent Company, Hazeltine Corporation, has, since 1924, continuously sought and obtained patent rights on certain of Hazeltine inventions and has entered into a number of agreements with foreign concerns to promote the use of such inventions in radio and television receivers in their respective countries.

530 As stated in L. B. Dodds' affidavit, paragraph 5, none of these Agreements has granted any rights whatsoever under any of the Hazeltine United States patents, specifically including patent 2,547,648 in suit. Understandably Paragraph 13 of Defendant's Answer does not so allege.

This situation resolves itself simply to this. Plaintiff owns a number of United States patents on inventions made in the Hazeltine laboratories which are licensed on a non-discriminatory basis to all manufacturers and such licenses contain no restriction on the exploration of license apparatus to foreign countries. Plaintiff's parent Company, Hazeltine Corporation, owns a number of foreign patents and has entered into agreements in certain foreign countries to promote the use of the inventions covered by such foreign patents. None of those Agreements conveys any rights under any of Plaintiff's United States patents.

531 Thus, there is no relation whatever between Plaintiff's licensing operations in the United States under its United States patents and the licensing operations of Hazeltine Corporation in foreign countries under its foreign patents.

Moreover, even if Hazeltine Corporation were using its foreign patents in violation of the antitrust laws (which Plaintiff denies), still such operation would be no defense to an action for infringement of Plaintiff's United States patents.

For the purposes of discussion, Plaintiff finds it unnecessary to rely on the fact that it is a corporate legal entity separate and distinct from its parent, Hazeltine Corporation, and is willing that the two companies be considered as a single legal entity insofar as their respective foreign and domestic licensing operations are concerned.

537 In the instant Action, paragraph 13 of Defendant's Answer alleges only that Plaintiff is using its foreign patents in violation of the antitrust laws which, even if true (which is denied), bears no relation to the United States patent in suit.

It is submitted that paragraph 13 of Defendant's Answer should be stricken as legally insufficient.

Respectfully,

Mason, Kolehmainen, Rathburn & Wyss,
By M. Hudson Rathburn,
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Chicago, Illinois
Dated: 5/9/63

Of Counsel:
L. B. Dodds,
E. A. Ruestow,
P. F. LaFollette.

539 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

PRE-TRIAL STIPULATION.

The parties to this Action, by their attorneys, in fulfillment of certain understandings reached orally in the course of the pre-trial conference held herein on April 3, 1963, in order to simplify and expedite trial hereby stipulate and agree, for purposes of this Action only, as follows:

1. Plaintiff agrees that it will not assert against Defendant or its agents, distributors, or customers, by legal action or otherwise, any of its patents other than patent No. 2,547,648 already in suit, until after final disposition of the instant Action.

2. Defendant agrees that it will not file any counterclaim herein or any separate action seeking a Declaratory Judgment of invalidity or non-infringement, or both, of any
540 of Plaintiff's patents other than patent No. 2,547,648, until after final disposition of the instant Action.

3. Defendant agrees that, in any legal action that may hereafter be brought against it by Plaintiff, charging infringement of any of Plaintiff's patents, other than Patent No. 2,547,648, Defendant will not rely, as a defense to such legal action, on any delay in the commencement of such action that is occasioned by Plaintiff's compliance with Paragraph 1 hereof.

4. Plaintiff agrees that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company.

5. Any party desiring to introduce in evidence at trial a document or copy thereof previously produced by either party during discovery proceedings herein, or produced by any party to either of certain actions entitled *Radio Corporation of America* v. *Rauland Corporation and Zenith*

Radio Corporation, No. 48-C-1818, in this Court, and *Zenith Radio Corporation* v. *Radio Corporation of America, et al.*, No. 1098, in the District Court of Delaware, may do so without further authentication or proof that, (a) such document is genuine, (b) such document was kept in the regular course of business, (c) such document was prepared
541 by the author (or authors) indicated thereon on or about the date appearing on the face thereof, and (d) in the case of correspondence or memoranda, that such document was sent by the addressor(s) and received by the addressee(s) on or about the date it bears; providing that all objections under the rules of evidence are reserved, and subject to correction if error appears. Each party agrees to furnish the other party, at least thirty (30) days prior to trial, a list of such documents on which it intends to rely at the trial and the party having custody of such documents agrees to make them available to the other party for inspection.

6. The parties agree that photocopies or equivalent reproduced copies of all documentary exhibits may be received in evidence at the trial of this Action in lieu of the original documents, without formal certification or verification; provided, however, that as to any document of which the original or a master copy thereof from which the copy in question is reproduced is in the custody of one of the parties (except charts, diagrams and the like prepared for the purposes of the trial of this Action), such original or master copy will be produced for inspection by counsel for the other party on reasonable notice, either prior to or during the trial; providing that all objections under the rules of evidence are reserved.

542 7. Uncertified printed copies or photostatic or equivalent reproduction copies of United States and foreign patents, printed publications, and official records and publications of the U. S. Patent Office may at trial be offered

in evidence by either party with the same force and effect as originals or certified copies thereof, and the dates of filing, issuance, or publication indicated thereon shall be accepted as correct, subject to correction if error should appear and providing that all objections under the rules of evidence are reserved.

8. Plaintiff is and has been since its date of issue the owner of Letters Patent No. 2,547,648, granted to A. V. Loughren on April 3, 1951, involved in this Action.

9. Solely for the purposes of establishing venue in this Action, Defendant admits that it has a regular and established place of business within the Northern District of Illinois, and that it sold or offered for sale within the Northern District of Illinois, prior to the filing of the Complaint herein, television receivers identified as Model 16D21, a correct circuit diagram of which is attached hereto as Exhibit A.

10. Charges of the Court Reporters for the Official Court copy of the transcript at trial shall be paid initially one-half by Plaintiff and one-half by Defendant, and shall
543 be taxed as costs against the losing party, or as the Court may direct. Such transcript copies as may be ordered by a party for its own use shall be paid for by such party.

11. This Stipulation and attached Exhibit may be offered in evidence in whole or in part by either party.

L. B. Dodds,
Counsel for Plaintiff.

Dugald S. McDougall,
Attorney for Defendant.

Dated: May 7, 1963.

764 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—59-C-1847) * *

AFFIDAVIT OF L. B. DODDS IN SUPPORT OF PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO HOLD PLAINTIFF IN CONTEMPT.

State of New York, }
County of Queens. } ss.

L. B. Dodds, being duly sworn, deposes and says that:

1. He is trial counsel for Plaintiff in the above-entitled action.

2. That in response to a Subpoena Duces Tecum served by Defendant on Plaintiff on or about January 1, 1962, as restricted by the order of this Court, dated March 16, 1962, Plaintiff made available to counsel for Defendant, for inspection, more than thirty legal-size file drawers
765 and transfer files, comprising several tens of thousands of pages and constituting the complete files of Plaintiff and its parent, Hazeltine Corporation, embracing the subject matter of the Subpoena Duces Tecum. These files covered the period from the early 1930's, the earliest files available, to the filing of the Complaint herein on November 30, 1959.

3. Counsel for Defendant spent several weeks carefully inspecting the aforesaid files, and selected from them several thousand pages of documents, marked for identification as Defendant's Exhibits Nos. 1-2786, inclusive. Many of these exhibits comprised several pages, and some of them a great many pages.

4. Plaintiff then undertook to obtain photocopies of the documents selected and marked by counsel for Defend-

ant and furnished them to counsel for Defendant at Defendant's expense.

5. It is deponent's opinion that Plaintiff has complied with the spirit of the order of this Court of March 16, 1962.

L. B. Dodds.

Sworn to and subscribed before me this 22 day of August, 1963.

Alga J. Osterlund,

(Seal) *Notary Public.*

Commission Expires March 30, 1965.

816 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

(Filed October 25, 1963.)

SUBSTITUTED MOTION FOR THE PRODUCTION OF DOCUMENTS.

Defendant moves the Court for an order requiring plaintiff to produce and to permit defendant to inspect and to copy all documents in the categories described in the subpoena duces tecum issued herein on January 2, 1962, which came into existence at any time during the period from November 20, 1959, to May 22, 1963, the date of the filing of the counterclaim herein.

Plaintiff has possession, custody, or control of each of the documents to which access is sought by this motion. Each of them constitutes or contains evidence relevant to matters involved in this action, as is shown in the affidavits and briefs submitted in support of the pending Motion To Hold Plaintiff In Contempt, which latter
817 motion is hereby withdrawn and the instant motion substituted in its place. The Court is respectfully requested to rule on this motion on the basis of the affidavits and briefs already filed herein with respect to said prior motion.

Zenith Radio Corporation,
By Thomas C. McConnell,
Philip J. Curtis,
134 South LaSalle Street,
Chicago 3, Illinois,

Dugald S. McDougall,
135 South LaSalle Street,
Chicago 3, Illinois,
Its Attorneys.

818 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

ORDER.

This cause having come on to be heard on the substituted motion of defendant for an order requiring plaintiff to produce and permit defendant to inspect and copy all documents in the categories described in the subpoena duces tecum issued herein on January 2, 1962, which came into existence at any time during the period from November 20, 1959, to May 22, 1963, the date of the filing of the counterclaim herein, and it appearing to the Court that plaintiff has the possession, custody, and control of the foregoing documents, and that each of them constitutes or contains evidence relevant to matters involved in this action, it is:

Ordered, that the plaintiff produce and permit defendant to inspect and copy all documents in the categories described in the subpoena duces tecum issued herein on
819 January 2, 1962, which came into existence at any time during the period from November 20, 1959, to May 22, 1963, the date of the filing of the counterclaim herein; and it is further

Ordered, that said documents be produced at such place and date as may be agreed upon by the parties.

Enter:

R. B. Austin,
United States District Judge.

Dated: October 25, 1963.

590 IN THE UNITED STATES DISTRICT COURT
(Caption—59-C-1847)

MOTION FOR LEAVE TO FILE COUNTERCLAIM.

Pursuant to Rules 13(a), (e), (f) and Rule 15(a) of the Federal Rules of Civil Procedure, defendant moves the court for leave to file a counterclaim, a copy of which is attached hereto, on the grounds that:

1. Said counterclaim arises out of the matters set forth in paragraphs 12 and 13 of defendant's answer herein and current related unlawful activities of plaintiff occurring since the filing of the answer which activities are the proximate cause of present and continuing damage to defendant sustained after the filing of the answer.

2. Said counterclaim is compulsory and justice requires that it be filed.

Attached hereto and marked Exhibit A is an Affidavit of counsel in support of the Motion.

Thomas C. McConnell,
Philip J. Curtis,
Attorneys for Defendant Zenith Radio Corporation.

May 22, 1963.

591 Exhibit A.

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

AFFIDAVIT OF FRANCIS W. CROTTY.

State of Illinois, }
County of Cook. } ss.

Francis W. Crotty, being duly sworn, deposes and says:

1. That he is Vice President in Charge of Patents at Zenith Radio Corporation, defendant herein, and one of defendant's counsel in this case.

2. That matters alleged in paragraphs 6-9 of defendant's counterclaim, to which this affidavit is attached, and which are the proximate cause of damages alleged and require the relief sought in said counterclaim, occurred after the filing of the answer herein.

3. That the unlawful conspiracy set forth in paragraphs 12 and 13 of the answer is the same conspiracy which is the subject of the counterclaim and said paragraphs are incorporated by reference in the counterclaim.

592 4. That the discovery proceedings already conducted by defendant with reference to paragraphs 12 and 13 of the answer revealed evidence in support of both the answer and the counterclaim.

5. That the filing of this counterclaim should in no way delay or prolong the trial of this cause.

Francis W. Crotty.

Subscribed and Sworn to before me this 21st day of March, 1963.

Edith B. O'Connor,
(Seal) *Notary Public.*

My Commission Expires Jan. 31, 1967.

593 IN THE UNITED STATES DISTRICT COURT.

(Caption—59-C-1847)

COUNTERCLAIM.

Zenith Radio Corporation, defendant and counterclaimant, counterclaims against Hazeltine Research, Inc., plaintiff and counterdefendant, pursuant to Rule 13(a) of the Federal Rules of Civil Procedure and says:

1. This is a counterclaim for damages and for injunctive relief under the following provisions of the Federal Anti-trust Laws. Sections 1 and 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, commonly known as the Sherman Act (U. S. C. §§ 1 and 2) and Sections 4 and 16 of the Clayton Act, 38 Stat. 731, 737 (15 U. S. C. §§ 15 and 26).

The Parties.

2. Counterclaimant, Zenith Radio Corporation, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business lo-

594 cated at 6001 W. Dickens Avenue, Chicago, Illinois, and is now and has been continuously for more than 43 years last past engaged in the development for sale and use and in the manufacture, sale and use of radio apparatus and receiving sets, and since the advent of television, television receiving sets throughout the United States and in foreign commerce, and during said period has built up a large volume of business in manufacturing and selling as the demand therefor has existed and will continue to exist, and in the shipment and sale of such apparatus in commerce between the various states of the United States and in foreign commerce, and said counterclaimant is now and has been engaged in said commerce during all of the period above stated and during all time material to this counterclaim.

3. Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit, is an Illinois corporation owned and operated as a wholly owned subsidiary of Hazeltine Corporation, a New York corporation, engaged in the manufacture and sale of electronic equipment and devices. Counterdefendant's sole business is research in the radio and TV fields and the licensing of a patent pool in the United States pertaining to radio and television receivers and other electronic products, said pool being the United States counterpart of a number of inter-related territorial patent pools formed and operated in various market areas of the world, pursuant to a combination and conspiracy between counterclaimant, its parent, Hazeltine Corporation, and sundry other persons and corporations, domestic and foreign, as more particularly described and set forth hereinafter.

595 4. Counterclaimant realleges Paragraphs 12 and 13 of its Answer herein and further asserts that counterdefendant and its parent, Hazeltine Corporation, in furtherance of the conspiracy alleged herein have entered into illegal agreements and arrangements with large foreign companies including General Electric Co. Ltd. of England, Canadian Radio Patents Limited of Canada, Svenska Aktiebolaget Gasaccumulator of Sweden and Neutrodyne Proprietary Ltd. of Australia wherein and whereby the inventions and patents of the parties and their co-conspirators have been pooled into mutually exclusive market areas of the world which are thereby illegally blockaded from imports of electronic devices from the United States. Counterdefendant and its parent, Hazeltine Corporation, have thereby agreed with their foreign co-conspirators not to grant licenses under their patents and inventions that would permit exports from the United States into England, Canada, Australia and other markets and said foreign co-conspirators have in turn refused to

issue any licenses for importation into their mutually exclusive territories without the consent of the respective pool members. The domestic patent rights of the foreign co-conspirators are, by agreement between Hazeltine Research, Inc., Hazeltine Corporation and said co-conspirators, funneled into the Hazeltine domestic pool by assignment to counterdefendant, Hazeltine Research, Inc.

5. To implement and effectuate the conspiracy, each of said pools has adopted the standard package type of license described herein covering hundreds of unidentified patents and by threats of expensive protracted and
596 ruinous infringement suits, has compelled acceptance of said licenses and effected the consequent restraint of trade and commerce between the United States and said foreign countries described above. This illegal employment of such package licenses has shielded the hundreds of pooled patents of the co-conspirators from attacks on their validity.

6. Following defendant's refusal to pay tribute to plaintiff under the illegal package license proposal and demands described in paragraph 12 of defendant's answer and after the complaint and answer in this suit had been filed, plaintiff presented to defendant for signature a form of agreement licensing defendant's manufacture and sales of television receivers of any type under a large number of patents, many unidentified, at exorbitant and prohibitive and discriminatory "royalty rates" having no reference to the use, if any, of the patents covered by the proffered package license or of the value of all of the individual patents in the pool. Said license, providing for total payment of "royalties" in excess of $2,500,000, was many times more onerous and discriminatory in its terms than the standard package license first proffered before the filing of this suit, and the illegal demand was made that defendant either sign it or face protracted and expen-

sive patent litigation on any number of hundreds of plaintiff's patents having any relation to television receivers.

7. The illegal package licenses which are the subject of counterdefendant's demands on counterclaimant include the following United States patents which counterde-
597 fendant specifically claims are infringed by television receivers manufactured and sold by counterclaimant:

Patent No.	Inventor	Issued
2,547,648	Loughren	4/ 3/51
2,728,813	Loughlin	12/27/55
2,773,929	Loughlin	12/11/56
2,774,072	Loughlin	12/11/56
2,848,537	Richman	8/19/58
2,905,749	Loughlin	9/22/59
2,922,839	Richman	1/26/60
2,933,558	Richman	4/19/60
2,954,425	Richman	9/27/60

Counterdefendant has further asserted that the aforesaid claims of infringement were not necessarily limited to the above-numbered patents but that hundreds of patents were at their disposal for possible assertion if the proffered package license agreement were not signed. Counterdefendant and its co-conspirators have thus employed all of the aforesaid patents and inventions in furtherance of the unlawful conspiracy described above.

8. The filing of this suit and the threats to file other infringement suits against counterclaimant on any number of patents in the Hazeltine pool were acts employed to effectuate the conspiracy alleged herein and to compel by economic coercion the signing of counterdefendant's package license. In turn either the signing of the license or a finding of validity and infringement in this suit will
598 signal and lend overwhelming support to attacks on counterclaimant's export trade by the foreign pools under foreign patents covering the same inventions.

9. The acts performed by counterdefendant and its co-conspirators pursuant to the unlawful conspiracy alleged herein were the direct and proximate cause of loss and damage to counterclaimant which injury is continuing and includes:

(A) Counterclaimant has been, and will be forced to expend large sums of money and to use the time of its officers and employees to defend against the patent infringement claims asserted;

(B) Counterclaimant has been forced by the threat of suit to expend a substantial amount of money to investigate the scope and validity of counterdefendant's patents;

(C) Because of the pendency of this suit and counterdefendant's other charges of infringement described in paragraph 7 above, counterdefendant has been forced to delay expansion of its foreign trade in England, Canada, Australia and other countries where, in furtherance of the conspiracy alleged herein, counterdefendant's inventions and patents are employed to restrain and prevent importation and trade.

Wherefore, counterclaimant prays for:

1. A judgment against counterdefendant for treble the amount of damages sustained by defendant as the proximate result of said acts of counterdefendant and its co-conspirators and for costs and attorneys' fees.

599 2. An injunction enjoining counterdefendant and anyone in privity with it from bringing or prosecuting this or any other action at law or suit in equity charging infringement of any patents against counterclaimant, its agents, vendees, distributors or others in privity with counterclaimant and enjoining counterdefendant from continuing its said unlawful combination and conspiracy.

3. Such other and further relief as the Court may deem just.

Thos. C. McConnell,
Philip J. Curtis,
Attorney for
Defendant-Counterclaimant,
Zenith Radio Corporation.

Dated: March 21, 1963.

Of Counsel:
Dugald S. McDougall,
Francis W. Crotty.

622 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIM.

Now comes Plaintiff, Hazeltine Research, Inc. by its attorneys and for its Reply to Defendant's Counterclaim states:

1. Plaintiff admits the allegations of Paragraph 1 thereof.

2. Plaintiff admits that Zenith Radio Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 6001 W. Dickens Avenue, Chicago, Illinois, but is without knowledge or information with respect to each and every other allegation of Paragraph 2 thereof sufficient to enable it to form a belief as to the extent and nature of Defendant's operations.

3. Plaintiff admits that Hazeltine Research, Inc. is an Illinois corporation and a wholly-owned subsidiary of
623 Hazeltine Corporation, but denies each and every other allegation of Paragraph 3 thereof.

4. Plaintiff denies each and every allegation of Paragraph 4 thereof and of Paragraphs 12 and 13 of Defendant's Answer incorporated therein by reference.

5. Plaintiff denies each and every allegation of Paragraph 5 thereof.

6. Plaintiff denies each and every allegation of Paragraph 6 thereof.

7. Plaintiff admits that Defendant has been charged to infringe the patents enumerated in Paragraph 7 thereof, but denies each and every other allegation of said Paragraph 7.

8. Plaintiff denies each and every allegation of Paragraph 8 thereof.

9. Plaintiff denies each and every allegation of Paragraph 9 thereof.

Wherefore, Plaintiff denies that Defendant is entitled to the relief prayed for or to any relief and, therefore, prays that Defendant's Counterclaim be dismissed with costs to Plaintiff, for Plaintiff's reasonable attorneys' fees, 624 and for such other and further relief as the equities of the case may require and as may to this Court seem meet and just.

Mason, Kohlemainen, Rathburn & Wyss,
By .....
20 North Wacker Drive,
Chicago 6, Illinois,
Attorneys for Plaintiff.

Chicago, Illinois,

Dated:

Of Counsel:

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Little Neck 62, N. Y.

Philip F. LaFollette,
Tenney Building,
Madison 3, Wisconsin.

980 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

STIPULATION WITH REFERENCE TO DOCUMENTARY EVIDENCE.

It is hereby stipulated by and between the parties hereto, by their respective counsel of record:

The documents identified in the attached list of fourteen pages entitled "Documentary Evidence" may be offered, marked by the reporter and received in evidence subject to the following objections:

1. Receipt in evidence of those documents from the files of Zenith Radio Corporation and the record in the case involving Zenith and Radio Corporation of America, so identified on the aforesaid list, are subject to the ruling of the Court on the present objection of Plaintiff that they are not admissible as constituting hearsay and not the best evidence.

981 2. Objection to the relevance of any of the documents on the aforesaid list is reserved for a later date which may include objection in the briefs of the parties.

3. Plaintiff shall have the right to offer additional documents from the files of Plaintiff and/or Defendant on subject matter related to the subject matter of the documents identified in the aforesaid list, subject to the conditions of aforesaid Paragraph 2.

It is further stipulated that the author of the handwritten notes marked Defendant's Exhibits 24, 27, 30 and 32 is Mr. E. A. Ruestow, Executive Vice President of Hazeltine Research, Inc.

Lawrence B. Dodds,
Attorney for Plaintiff.
Thomas C. McConnell,
Attorney for Defendant.

982 List of Documents.

I. Counterclaimant's Exhibits:

A. Documents from Hazeltine Files:

DXBud 2615
Dodds X21
DXBud 2328-9
DXBud 193
DXBud 191 ABC
DXBud 2496-7
DXBud 2509-10
DXBud 2582-4
DXBud 2502-3
DXBud 2009
Dodds X18
DXBud 157
Dodds X109
DXBud 2674
DXBud 2779
DXBud 340A
Dodds X62
Dodds X64
Dodds X70
Dodds X72
Dodds X73
Dodds X76
Dodds X75
Dodds X89
Dodds X96
DX Bud 592
DXBud 583-5
DXBud 580
Dodds X131
Dodds X36
Dodds 37
Dodds X39
Dodds X41
Dodds X42
Dodds X43
Dodds X44
Dodds X45
Dodds X46
Dodds X47
Dodds X48
Dodds X51
Dodds X52
Dodds X54
Dodds X98
983 Dodds X101
Dodds X100
Dodds X99
Dodds X118
Dodds X121
Dodds X122
Dodds X106
DXBud 528
Dodds X109
Dodds X108
Dodds X107
Dodds X110
Dodds X111
Dodds X112
Dodds X113
Dodds X104
Dodds X117
Dodds X119
Dodds X120
Dodds X123
Dodds X124
Dodds X125
Dodds X126
Dodds X128
Dodds X127
Dodds X129

Dodds X130
DXBud 1157
DXBud 2148-49
DXBud 2147
DXBud 2090
DXBud 2531
DXBud 2295-2307

Ltr. 3/19/63—McFarland to CRPL
11/20/61—Ruestow to Wilson
Undated, unsigned, handwritten notes (Comments of EAR on LBD memo of 12/14/61)
Undated, unsigned memo—"Notes on Haz. Patent Picture"
5/8/62—Ruestow to Swinyard
1/1/63—Ruestow to Beam & McFarland
12/14/61—Dodds to Wilson
1/24/63—Dodds to McFarland
Undated, unsigned, handwritten notes (EAR notes re LBD Plan of 1/24/63)
1/28/63—Boos to Ruestow
984 2/8/63—Westermann Memo to File
Undated, unsigned, typewritten sheet with 3 paragraphs I, II & III
2/15/63—Ruestow to Beam
2/25/63—Unsigned "Domestic Patent Licensing Plan Draft"
2/25/63—Unsigned "Problem for Special Consideration"
3/4/63—WMM to LaFollette
3/10/63—Unsigned, handwritten notes (by EAR?)
3/20/63—Report of Ruestow to Board
4/17/63—Report of Ruestow to Board
License Draft—3/26/62EAR:AMR
3/20/63—Ruestow to Crotty
5/20/63—Ruestow to Crotty
Hazeltine Standard License Agreement Form 918 and Form A
DXBud 133 A-B
DXBud 131 A-B
DXBud 120, 121
Ltr. 4/7/60—Dodds to MacQueen
Ltr. 4/13/60—MacDonald to Dodds
Ltr. 4/19/60—MacDonald to MacQueen

Ltr. 6/14/60—MacQueen to Dodds
9/5/33—Hazelpat/Hazeltine
4/6/39—Hazeltine/GEC (2 agreements of even date)
7/24/45—Hazeltine/GEC
11/14/57—Hazeltine/GEC
Agreement of 1962—Hazeltine/GEC
Exhibit H—To Hazeltine's Answers to Certain Interrogatories of Zenith
Exhibit I-1—Of Hazeltine's Answers to Interrogatories
Exhibit K—Of Hazeltine's Answers to Interrogatories
Exhibit L—Of Hazeltine's Answers to Interrogatories
Exhibit M—Of Hazeltine's Answers to Interrogatories
Exhibit N—Of Hazeltine's Answers to Interrogatories
License A8-S
License A8-T
Agreement—Hazeltine/Neutrodyne—9/11/28
Australian Patent License, License No. 1—Exhibit P
License No. 5—Exhibit Q
License No. 6B
License No. 7B (1961)
Ltr. 11/17/60—Warner to Dodds
Ltr. 1/2/63—Tiffany to McFarland
Ext. Agreement of 11/14/57
DXBud 1789-92
Dodds X77
DXBud 679A-695

B. Documents from the Record in RCA/Zenith
985 Litigation
PD2477-8—Ltr. 1/21/24—Manton Davis (RCA) to I. J. Adams (RCA)
PD2479-80—Ltr. 1/23/24—Adams to Davis (RCA)
CAV914-5—Ltr. 11/27/35—McFarlane (CGE) to Grimley (RCA Victor)

CAV447—Ltr. 6/11/36—Brooke (CRPL) to Gardner (RCA Victor)
IL2185-97—Ltr. 1/13/44—MacKenty to Schairer (RCA) MacK X 33
IL2236-39—Ltr. 12/11/44—MacKenty to Schairer —Brownlee X15
CAV256-62—Ltr. 11/6/46—Marpole (RCA) to Shackelford Brownlee X21
LM517—Ltr. 11/17/49—Mayer to Shackelford—Mayer X25
MK80 to 80-22—Ltr. 8/10/51—Johnson to Marpole
1603-4 (WE) Minutes 4/27/45
CRPL 217 & 221—Ltr. 11/23/50—Brownlee to CRPL Board—Brownlee X11
Minutes 5/7/53—Brownlee X13
Minutes 3/5/53—Brownlee X24
CGE-2-5 to 2-9—Ltr. 11/5/53—Thompson to File —Thompson X1
Ltr. 3/1/54—Scroggie to Members—Brownlee X9
CGE-3-44 to 3-113—12/53 General Survey—Hamer X4
CW644-6—Ltr. 9/9/55—McConnell to Steiger (West'hse)
CW665—CRPL Notice to Importers
CRPL 200—Notice to Importers
CRPL 201—Notice to Importers
CRPL 208—Notice to Importers
CRPL 213-15—Notice to Importers
CRPL 204—Notice to Importers
CRPL 205—Notice to Importers
CRPL 268-9—Notice to Importers
CRPL 141—2/13/51—Brownlee to Consolidated Motors—Brownlee X30
CRPL 140A—Ltr. 2/14/51—Lush to CRPL—Brownlee X30
CRPL 141A—Ltr. 2/16/51—CRPL to Lush—Brownlee X30
S-10924-27—Ltr. & Memo—3/30/44—3/27/44—MacKenty X32
IB311-12—Ltr. 8/2/48—Shackelford to Coe (RCA) —Shackelford X120

Agreement —1/19/27—CGE/C. Marconi/C. West'-hse/No. E Ltd./Std. Radio—Zenith X1
S3121-2—Ltr. 12/13/26—Shoenberg to Sarnoff—Sarnoff X53
PD6027-34—Ltr. 11/29/32—MacKenty to Schairer—MacKenty X1
Ltr. 12/15/48—Birney to Shackelford—Mayer X2
Ltr. 1/2/50—Mayer to Shackelford—Mayer X44
15084-6—Ltr. 8/18/33—Topham to Western Electric Co. Ltd.
9/13/60—Topham to GEC
S3123-6—License A Issued by Marconi's Wireless Telegraph Co. Ltd.
S2538-45—License A.4 (2nd Edition)
986 IL-2139—IL-2144—1/24/51—Shackelford to Brunet—Shackelford X132
ISE-1-ISE-1æ — 8/11/33 — Agreement. Amalgamated Wireless (A'Asia) Limited/Standard Telephones & Cables (A'asia) Limited Herod X4
CX-107-12—Ltr. 4/23/35—Clapp to Brown (Internat'l GE Co. Inc.)
CX-107-16
CX-107-19—4/28/47—Ltr. Clapp to Eveleth
CX-107-22
License 9/26/57—RCA/Zenith/Rauland
License 9/27/57—GE/Zenith/Rauland
License 9/27/57—CGE/Zenith/Rauland
License 9/27/57—Western Electric/Zenith/Rauland
Dodds X28
Dodds X22
Dodds X25
Dodds X3
Dodds X6
Dodds X7
Dodds X8
Dodds X5
Dodds X9
Dodds X34
Dodds X97

987 1. Counterclaimant's Exhibits:

Documents from the Files of Zenith

Z2338—Ltr. 2/21/51—Coleman to Zenith Bonfig X4
Z2339—2/20/51—Miguel to Lush Bonfig X4
2335 & 6—Ltr. 5/7/51—Miguel to Consolidated Bonfig X3
2337—Ltr. 4/27/51—Consolidated to Miguel Bonfig X3
1851—Ltr. 6/12/51—Consolidated to Zenith
1731—Ltr. 5/1/52—Miguel to Consolidated
1732—Ltr. 4/24/52—Consolidated to Miguel Lush X4
2687-8—Ltr. 4/11/53—Winnipeg to Gonzalez
2352—Ltr. 8/20/54—MacCuspie to J. S. Wright Bonfig X5
2353—Ltr. 8/16/54—Brownlee to MacCuspie Bonfig X6
2689—Ltr. 8/16/54—Brownlee to MacCuspie (Ideal)
2354-5—Ltr. 7/21/54—J. S. Wright to MacCuspie Bonfig X7
2356-7—Ltr. 7/16/54—MacCuspie to Peirels Bonfig X8
2358-9—Ltr. 7/6/54—Brownlee to Ideal Bonfig X10 & Brownlee X22
X.P. Exhibit 1179—6/24/27—Ltr. CRPL to Zenith
6/22/27—Ltr. Zenith to CRPL
2246-2252—Sample Memo of Agreement of 1927
X.P. Exhibit 1180—Ltr. 2/6/30—CRPL to Zenith
2226-2237—Standard Agreement form attached thereto
X.P. Exhibit 1183—Ltr. 11/30/36—CRPL to Zenith with Notice
X.P. Exhibit 1182—Ltr. 1/30/30—Zenith to CRPL
X.P. Exhibit 1191—Ltr. 9/12/51—CRPL to Zenith Patent Dept.
2127—Ltr. 9/10/51—Zenith Patent Dept. to CRPL
2128—Ltr. 9/6/51—CRPL to Zenith
~~*X.P. Exhibit 1193 Ltr. 12/4/51 CRPL to Crown Electrical Mfg. Ltd.*~~

X.P. Exhibit 1193—Ltr, 7/23/53—CRPL to Zenith—Intl. Div.
2073—Ltr. 7/21/53—Zenith to CRPL
X.P. Exhibit 1194—Ltr. 1/17/52—CRPL to Zenith Patent Dept.
~~*2075 2125 Std. output license agreement attached*~~
Ltr. 4/16/59—CRPL to Zenith—Curtis
Telegram 9/10/58—ZRC of Canada to CRPL with adv.
Ltr. 9/16/58—CRPL to Zenith RC of Canada
Ltr. 9/23/58—ZRC of Canada to CRPL
Memo of conf. held on 7/30/58 with CRPL and ZRC of Canada personnel (Kiely)
~~*Ltr. 4/27/60 of Can. G. E. Co. Ltd.*~~
Ltr. 6/5/59—CRPL to Zenith
Memo of Conf. held on 7/30/58 with CRPL and ZRC of Canada personnel by Capell
~~*Ltr. 7/30/58 CRPL to Kiely, ZRC of Canada*~~
~~*Ltr. 4/3/58 CRPL to Hackbusch Electronics Ltd. with copy of alternative licenses attached*~~
Exhibit 1258—Ltr. 5/22/28—Electric Radios Ltd. to ZRC
Exhibit 1251—Ltr. 12/18/29—Zenith to Williams Motor Company
Ltr. 12/11/29—Munroe of Williams to Zenith
988 Exhibit 1253—Ltr. 3/10/30—Zenith to Monroe of Williams
Ltr. 3/4/30—Monroe to Zenith
Ltr. 3/1/30—G. P. Williams to Smart & Biggar
Ltr. 2/21/30—Smart & Biggar to Williams
Exhibit 1252—Telegram 3/23/30—Munroe to Zenith
Exhibit 1254—Ltr. 4/3/30—Munroe to Zenith
Exhibit 1255—Ltr. 4/17/30—Munroe to Zenith
Exhibit 1256—Ltr. 6/27/30—Haugh to Klugh
Exhibit 1262—Memo 2/18/30—Vasquez to Mr. Robertson
Exhibit 1314—Ltr. 11/4/36—Zenith to Grosser & Glass Ltd.
Ltr. 10/31/36—Grosser & Glass Ltd. to Zenith
Exhibit 1263—Memo 2/3/37—McDonald to Bryant
347—Ltr. 6/28/37—Zenith to Beasley's

348—Ltr. 6/18/37—Beasley's to Zenith
Exhibit 1319—Ltr. 9/1/37—Zenith to Easingwood
428—Ltr. 8/16/37—Easingwood to Zenith
Exhibit 1324—Ltr. 10/15/37—Zenith to Wall
446—Ltr. 10/6/37—Wall to Zenith
Exhibit 1241—Ltr. 12/10/37—Bryant to Nemetz
1820—Ltr. 12/6/37—Nemetz to Zenith
Exhibit 1328—Ltr. 3/14/38—Zenith to Columbia Sales Service, Inc.
261—Ltr. 3/11/38—Zenith from Columbia Sales Service Inc.
Exhibit 1392—Ltr. 3/25/38—Zenith to Bailey
276—Ltr. 2/11/38—Bailey to Zenith
Exhibit 1329—Ltr. 3/25/38—Zenith to Jarvis Elec. & Ref. Co.
2629-2631—Ltr. 3/10/38—Jarvis Elec. & Ref. Co. to Zenith
Exhibit 1391—Ltr. 3/28/38—Zenith to Parkinson
273-274—Ltr. 3/26/38—Parkinson to Zenith.
Exhibit 1401—Ltr. 8/8/38—Zenith to Grosser & Glass Ltd.
246—Ltr. 7/18/38—Grosser & Glass Ltd to Zenith
Exhibit 1412—Ltr. 9/15/38—Zenith to Jack Becker
265 — Ltr. 9/9/38 — Jack Becker — Dominion to Zenith
Exhibit 1333—Ltr. 9/20/38—Zenith to Mfrs. Sales Company
2617—Ltr. 9/14/38—Mfrs. Sales to Zenith
Exhibit 1334—Ltr. 12/31/38—Zenith to Bassingthwaighthe
Z-19444-6 — Ltr. 12/21/38 — Bassingthwaighte to Zenith
Exhibit 1406—Ltr. 2/21/38—Zenith to Park Ave. Furn. Store.
976—Ltr. 2/15/39—Park Ave. Furn. Store to Zenith
Exhibit 1397—Ltr. 2/22/39—Zenith to Cherniak & Co., Ltd.
Exhibit 1416—Ltr. 3/1/39—Zenith to Mr. Allen
938—Ltr. 2/18/39—D. E. Allen to Zenith

Exhibit 1398—Ltr. 7/6/39—Zenith to Norton Motors
936—Ltr. 7/3/39—Norton Motors to Zenith
Exhibit 1417—Ltr. 8/8/39—Zenith to National Mkt. Service
933—Ltr. 7/22/39—National Mkt. Service to Zenith
Exhibit 1250—Ltr. 8/8/39—Zenith to Coast Dist. Ltd.
989 464—Ltr. 7/31/39—Coast Dist. Ltd. to Zenith
Exhibit 1340—Ltr. 11/30/39—Zenith to Mr. Droneck
Z-19454—Ltr. 11/25/39—Droneck to Zenith
Exhibit 1419—Ltr. 11/30/39—Zenith to Air Electric Dist.
953—Ltr. 11/27/39—Air Electric to Zenith
Exhibit 1267—Memo 9/30/40—McDonald to Thompson with circulation list attached
Exhibit 1275—Memo from I.H. re Sale of Zenith Radios in Canada dated 11/24/45
2364—Telegram 8/8/51—Zenith to Montebello Electric
2365—Telegram 8/8/51—Montebello Electric to Zenith
Exhibit 1342—Ltr. 8/21/51—Intl. Div. to North Shore Elec. Dist. Ltd.
Z-13801—Ltr. 8/13/51—North Shore Elec. Dist. Ltd. to Zenith
Exhibit 1282—Telegram 8/31/51—Zenith to Tomas
2411—Telegram 8/31/51—Tomas to Zenith
Exhibit 1345—Ltr. 1/25/52—Intl. Div. to Taylor Hdwe. Ltd.
Z-17986—Ltd. 1/18/52—Taylor Hdwe. Ltd. to Zenith
Exhibit 1358—Ltr. 3/9/52—Intl. Div. to Trevor Peck Co. Ltd.
1428—Ltr. 2/24/53—Trevor Peck Co. Ltd. to Zenith
Exhibit 1347—Ltr. 3/11/52—Miguel to Gardozo Furn. Co.
67—Ltr. 2/26/52—Cardozo Furn. Co. to Zenith

Exhibit 1348—Ltr. 7/4/52—Hobbs Hdwe. Co. Ltd. to Zenith
181—Ltr. 7/1/52—Miguel to Hobbs Hdwe. Co., Ltd.
182—Ltr. 6/20/52—Hobbs Hdwe. Co., Ltd. to Zenith
Exhibit 1352—Ltr. 9/26/52—Miguel to Manning Equipment Ltd.
152—Ltr. 9/16/52—Manning Equipment Ltd. to Zenith
Exhibit 1221—Ltr. 12/24/52—Intl. Div. to Codere Limitee
54—Ltr. 12/16/52—Codere Limitee to Zenith
Exhibit 1344—Ltr. 1/13/53—Intl. Div. to Atlas Intl, Agency
90—Ltr. 12/30/52—Atlas Intl. Agency to Zenith
Exhibit 1356—Ltr. 2/11/53—Intl. Div. to Belltower Dist. Ltd.
1404—Ltr. 2/4/53—Belltower Dist. Ltd. to Zenith
Exhibit 1357—Ltr. 2/18/53—Arthur J. Turner to Zenith
1493—Ltr. 2/11/53—Intl. Div. to Turner
1494—Ltr. 2/2/53—Turner to Zenith
Z-19500—Ltr. 3/8/56—Mrs. Galinsky to Zenith
Exhibit 1359—Ltr. 3/14/53—Miguel to Robinson Electric Ltd.
1759-60—Ltr. 3/6/53—Robinson Electric to Zenith
Exhibit 1219—Ltr. 3/27/53—Intl. Div. to Winnipeg Sup. & Fuel Co. Ltd.
1489—Ltr. 3/23/53—Winnipeg Sup. & Fuel Co. to Zenith
Exhibit 1361—Ltr. 4/16/53—Miguel to Firestone Tire & Rubber
197—Ltr. 4/2/53—Firestone Tire & Rubber to Zenith
Exhibit 1211—Ltr. 5/4/53—Robinson Electric, Ltd. to Zenith
990 133—Ltr. 4/28/53—Miguel to Robinson Electric Ltd.
134—Ltr. 4/20/53—Robinson Electric to Zenith

Exhibit 1217—Ltr. 5/5/53—Intl. Div. to Winnipeg Supply & Fuel Co.
87-88—Ltr. 4/11/53—Winnipeg Supply & Fuel Co. to Zenith
Exhibit 1216—Ltr. 5/7/53—Miguel to Mark Rycharski
127—Memo 5/2/53—McDonald to Miguel (ZRC)
128-129—Ltr. 4/26/53—Mr. Rycharski to Zenith
Exhibit 1242A—Ltr. 5/14/53—Miguel to Major Appliance Div. Seattle Hdwe.
3-RCA 963—Ltr. 4/28/63—Seattle Hdwe. to Zenith
Exhibit 1362—Ltr. 6/9/53—Intl. Div. to Pacific Electric
1500—Ltr. 5/6/53—Pacific Electric to Zenith
Exhibit 1238—Ltr. 6/19/53—Miguel to National Television
1764—Ltr. 6/6/53—National Television to Zenith
1765—Ltr. 5/23/53—National Television to Zenith
Exhibit 1364—Ltr. 7/1/53—Intl. Div. to Arkley, Payne & Watson Ltd.
1505—Ltr. 6/26/53—Arkley, Payne & Watson Ltd. to Zenith
Exhibit 1368—Ltr. 7/2/53—Intl. Div. to Harris Music Shop
1513—Ltr. 6/20/53—Harris to Zenith
Exhibit 1214—Ltr. 8/31/53—Intl. Div. to Crepeau
1377—Ltr. 8/26/53—ZRC of NY to Crepeau
1378—Ltr. 8/19/63—Crepeau to ZRC of NY
Exhibit 1210—Ltr. 10/22/53—Miguel to Robinson Electric
131—Ltr. 10/8/53—Robinson Electric to Zenith
1791—Ltr. 12/22/53—Miguel to P.B. Hart Agency
1792—Ltr. 12/8/53—P. B. Hart to Zenith
166—Ltr. 2/1/54—Industrial Dist. Co. to Zenith
167—Ltr. 12/18/53—Miguel to Industrial Dist. Co.
168—Memo 12/15/53—Monfig to Miguel
169-170—Ltr. 12/1/53—Industrial Dist. Co. to Zenith
171—Ltr. 10/19/53—Industrial Dist. Co. to Zenith
Exhibit 1243—Ltr. 2/2/54—Miguel to Amana of B.C.

1740—Ltr. 1/25/54—Amana of B.C. to Zenith
Exhibit 1247—Ltr. 2/24/54—Roch Potvin to Zenith
2388—Ltr. 1/21/54—CRPL to Roch Potvin with Notice
Exhibit 1372—Ltr. 4/8/54—Intl. Div. to Weco Sales
Z-18067—Ltr. 4/4/54—Weco Sales to ZRC
Exhibit 1372—Ltr. 7/23/54—Intl. Div. to Lumsden and Company
Z-18043—Ltr. 7/20/54—Lumsden & Company to Zenith
Exhibit 1206—Ltr. 8/11/54—Miguel to Shelbern Industries
Z-19463—Ltr. 8/6/54—Shelbern Industries to Zenith
Exhibit 1205—Ltr. 10/26/54—Miguel to Valliere Limitee
Z-19472—Ltr. 19/20/54—J.D. Valliere Limitee to Zenith
Exhibit 1278—Ltr. 11/29/54—Watkins Co. Ltd. to Zenith
2428-9—Ltr. 11/26/54—Cowling, MacTavish, Osborne & Henderson to Watkins Co. Ltd.
991 2430—Memo 11/1/54—Kaplan to Bonfig, Miguel, Wright
Exhibit 1374—Ltr. 2/15/55—Miguel to McMullen Supplies, Ltd.
Z-19477—Ltr. 1/29/55—McMullen Supplies, Ltd. to Zenith
Exhibit 1202—Ltr. 11/17/55—Miguel to Marshall-Wells Can. Cos.
Z-19492—Ltr. 11/4/55—Marshall-Wells Can. Co. to Zenith
Exhibit 1201—Ltr. 11/24/55—Pacific Goldsmiths to Zenith
4166—Ltr. 11/17/55—Miguel to Pacific Goldsmiths
Exhibit 1245—Ltr. 12/8/55—Miguel to Southern Canada Power Co.
Z-19497—Ltr. 11/28/55—Southern Canada Power Co. to Zenith

Exhibit 1376—Ltr. 4/12/56—Alford & Co. Ltd. to Zenith
Z-19506-7—Ltr. 4/6/56—Miguel to Alford & Co. Ltd.
Z-19508—Ltr. 4/2/56—Alford & Co., Ltd. to Zenith
Z-12740-1—Ltr. 12/12/33—Canadian Marconi Co. to McDonald
618-20—Ltr. 3/31/31—to Paul B. Klugh
Z-9932-37—Report 8/17/31—by Thornton
3692—Ltr. 11/13/33—Thompson to Topham
3693—Ltr. 10/31/33—Topham to Thompson
2536-7—Ltr. 5/26/36—Topham to Turnpress Limited
2534-5—Ltr. 5/28/36—Toubin to ZRC, Zenith-del Mercado Ex. 1
2527-30—Ltr. 11/9/36—Toubkin to ZRC, Zenith-del Marcado Ex. 2
2645—Ltr. 3/5/37—Toubkin to ZRC, RCA France Ex. 7
2642—Ltr. 3/18/37—Toubkin to ZRC, Zenith-del Mercado Ex. 4
2641—Telegram 3/18/37—Toubkin to Zenith, Zenith-del Mercado X8
2639—Ltr. 3/31/37—Duke to Toubkin
2638—Ltr. 4/3/37—Toubkin to ZRC, Zenith-del Mercado Ex. 8
2643-4—Ltr. 3/8/37—Toubkin to Weldon, Zenith-del Mercado Ex. 5
2639—Ltr. 3/31/37—Duke to Toubkin
2633—Ltr. 6/25/37—Toubkin to ZRC, Zenith-del Mercado Ex. 9
2634—Ltr. 6/22/37—Weldon to Toubkin
2635—Telegram 6/19/37—Toubkin to Zenith
2646—Ltr. 7/3/37—Weldon to Entwistle
2647—Telegram 6/15/37—Entwistle to Zenith
2641—Ltr. 9/3/37—Weldon to Toubkin, Zenith-del Mercado Ex. 11
2462-4—Ltr. 9/13/37—Toubkin to Weldon, Zenith-del Mercado Ex. 11
3707—Ltr. 8/3/38—Topham to Thompson, Zenith-del Mercado Ex. 12

3708—Ltr. 7/13/38—Thompson to Topham, Zenith-del Mercado Ex. 12
3681-90—Ltr. 12/21/38—Topham to Thompson with license
Ltr. 4/4/58—Grimm to Argerich
Ltr. 1/25/58—Argerich to ZRC
Ltr. 12/21/58—Grimm to Suloiman & att. ltr. from Suloiman
Ltr. 12/30/58—Grimm to Brookes & Att. Ltr. from Brookes
Ltr. 3/30/59—Olsen to Rogers & att. Ltr. from Rogers
Ltr. 6/16/59—Peirels to Winter
Ltr. 5/30/59—Winter to ZRC
Ltr. 9/17/59—Carstens to Wedderspoon
992 Ltr. 9/4/59—Harley to Miguel
Ltr. 8/4/59—Ramsey to Harley
Ltr. 9/14/61—Semonoff to Ramsey
Ltr. 3/28/62—Ramsay to Miguel
Ltr. 4/19/62—Ramsay to Semonoff
Ltr. 4/26/62—Carstens to Ramsay
Ltr. 4/19/62—Ramsay to Miguel
Ltr. 8/1/62—Ramsay to Miguel
Ltr. 8/3/62—Semonoff to Ramsay & att. telegrams
Ltr. 8/7/62—Semonoff to Ramsay
Ltr. 8/1/62—Ramsay to Semonoff
Ltr. 8/2/62—Ramsay to Semonoff
Ltr. 8/3/62—Ramsay to Semonoff
Ltr. 8/15/62—Semonoff to Ramsay
Ltr. 10/9/62—Semonoff to Ramsay
Ltr. 9/28/62—Ramsay to Semonoff
Ltr. 11/8/62—Ramsay to Miguel
Ltr. 4/21/60—Peirels to Jarvis
Ltr. 7/18/60—Jarvis to Peirels
Foreign Information Service (Bulletin No. 2,405) 3/28/60
Ltr. 12/20/56—Peirels to Hannah
Ltr. 10/15/56—by Hannah
Ltr. 3/20/57—Peirels to Blahout
Ltr. 3/13/57—Blahout to ZRC
Ltr. 4/15/57—Peirels to Brooks & Co.

Ltr. 4/5/57—Brooks & Co. (Platt) to ZRC
Ltr. 8/7/57—Carstens to Hegh
Ltr. undated—by Hegh
Ltr. 12/10/57—DeRobertis to Irvine
Ltr. undated—by Irvine
Ltr. 4/28/58—Olsen to Magnecord Australasia Pty. Ltd.
Ltr. 12/10/58—Miguel to Bean
Ltr. 12/3/58—Bean to Hunt
Ltr. 12/24/58—Mary Anne Sundt to Bean
Ltr. 3/2/59—Grimm to Bailey & att. inquiry
Ltr. 3/4/59—Grimm to Hossain
Ltr. 2/24/59—Hossain to ZRC
Ltr. 4/1/59—Grimm to Evans & attached letter from Evans
Ltr. 10/30/58—Grimm to Evans and attached letter from Evans
Ltr. 5/6/59—Cook to Bennett & attached letter from Bennett
Ltr. 6/22/59—Cook to Oldfield
Ltr. 6/2/59—Oldfield to Zenith Radio Corp.
Ltr. 5/21/59—Oldfield to Zenith Radio Corp.
Ltr. 12/24/59—Peirels to Hawkins
Ltr. 12/16/59—Hawkins to Peirels
993 Ltr. 2/29/60—Vigil to Jacoby
Ltr. 2/10/60—Jacoby to Zenith Radio Corp.
Ltr. 3/8/60—Cook to Cassa & attached letter from Cassa
Ltr. 3/8/60—Cook to Varga
Ltr. 3/2/60—Varga to Zenith Radio Corp.
Ltr. 3/22/60—Grimm to Barrett & attached ltr. from Barrett
Ltr. 4/22/60—Grimm to Chan
Ltr. 4/19/60—Cham to Zenith
Ltr. 4/22/60—Grimm to Rawson
Ltr. 4/15/60—Rawson to Zenith Radio Corp.
Ltr. 6/10/60—Grimm to Vidler
Ltr. 6/3/60—Vidler to Zenith Radio Corp.
Ltr. 10/4/60—Semonoff to Tremayne
Ltr. 9/29/60—Lemayne to Zenith Radio Corp.
Ltr. 10/17/60—Semonoff to Smith
Ltr. 10/10/60—Smith to Zenith Radio Corp.

Ltr. 11/29/60—Semonoff to Lawrence & ltr. from Lawrence
Ltr. 12/20/60—Semonoff to Cominos
Ltr. 12/14/60—Cominos to Zenith Radio Corp.
Ltr. 5/8/62—Hart to Rayford's Home Electrics Pty. Ltd.
Ltr. 5/2/62—Rayford's to Zenith Radio
Ltr. 11/20/62—Hart to O'Neil
Ltr. 11/15/62—O'Neil to Zenith Radio Corp.
Ltr. 1/3/63—Hart to Gersekoski
Ltr. 12/18/62—Gersekoski to Zenith Sales Corp.
Ltr. Swinyard to Robertson, Notice of Infringement 10/13/59
Ltr. 9/28/61—Ruestow to Crotty
Ltr. 10/3/61—Crotty to Ruestow
Ltr. 10/25/61—Crotty to Ruestow
Ltr. 11/1/61—Crotty to Ruestow
Memo to Hazeltine files—Crotty—11/14/61
Ltr. 11/21/61—Crotty to Ruestow
Ltr. 4/16/62—Crotty to Ruestow
Ltr. 4/27/62—Ruestow to Crotty
Ltr. 5/17/62—Crotty to Ruestow
Ltr. 7/23/62—MacCuspie to J. Wright
Ltr. 5/17/62—McConnell (CRPL) to Electrical Distributors
Ltr. 4/2/63—Crotty to Ruestow
Annual Report of Haz. Corp. for 1962
Ltr. 1/17/64—Swinyard to Zenith (Crotty)
Excerpts from Monthly Bulletin of Production Statistics, No. 145, October, 1960, Commonwealth Bureau of Census and Statistics, Canberra, Australia.
994 Excerpts from Monthly Bulletin of Production Statistics, No. 280, September, 1963, Commonwealth Bureau of Census and Statistics, Canberra, Australia.
Excerpts from Monthly Bulletin of Production Statistics, No. 174, March, 1963, Commonwealth Bureau of Census and Statistics, Canberra, Australia.
Excerpts from Canadian Statistical Review, October 1963, Cat. No. 11-003.

Excerpts from Canadian Statistical Review Historical Summary 1963 Edition, Cat. No. 11-502.
Excerpts from Canadian Statistical Review, 1955 Supplement, Sup. No. 2.
Excerpts from Canadian Statistical Review, December, 1963, Cat. No. 11-003.
Excerpts from Monthly Digest of Statistics, No. 214, October, 1963—London: Her Majesty's Stationery Office.
Excerpts from Annual Abstract of Statistics, No. 100, 1963 London: Her Majesty's Stationery Office.
1090—Ltr. 12/7/34—Rothermel to Zenith.

995 II. Counterdefendant's Exhibits:

Pleadings From The RCA/Zenith Delaware Litigation.
1. Plaintiff's reply to the counterclaim of RCA et al.
2. The stipulation and order of dismissal.

Pleadings From The RCA/Zenith Illinois Litigation.
1. Amended complaint of 12/7/60.
2. Defendant's answer and counterclaim.
3. Amended counterclaim and amended prayers for relief.
4. Amendment to the counterclaim.
5. Amendment and supplement to the counterclaim.
6. Stipulation and order of dismissal.

RCA/Zenith Settlement Agreement.
Canadian Patent Act of 1935.
Sections 66-73, inclusive.
Documents from the Files of Zenith.
1384—Memo—12/28/34—McDonald to Robertson and attached memoranda of 12/27/34—Hefter to Robertson and letter 2/25/35—Hefter to Rothermel.
1190—Memo—10/15/45—Howland to Robertson.
1188—Memo—12/5/50—Birchard to Miguel.
1187—Memo—10/3/45—Howland to Herriot.
1184—Notes from CRPL.
1273—Memo—11/8/45—Herriot to Robertson and attached memorandum 10/29/45—Howland to McDonald.

1072 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—59-C-1847) • •

STIPULATION.

It is hereby stipulated by and between counsel for the parties herein that the description of the companies contained in Appendix III to Zenith's Pre-Trial Brief on the anti-trust issues is a correct abstract of the operations of the companies concerned with the following exceptions:

1. Canadian Radio Patents Limited at page 77. In the next to the last line, before Hazeltine, insert the words—has the right to grant licenses under the Canadian patents of—.
2. Electric & Musical Industries, Limited at page 78. Substitute for the present description, the follow-
1073 ing:—This is a public company formed in 1931 and is engaged in research development and patent licensing and is also a holding company for several concerns in various fields, including vacuum tubes and household appliances.

L. B. Dodds,
Attorney for Plaintiff.
Thomas C. McConnell,
Attorney for Defendant.

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APPENDIX III.

Hazeltine's Co-conspirators.

In Australia.

Australian Radio Technical Services & Patents Co. Pty Ltd.
47 York Street

Sydney, Australia

The Company which was started in 1933 does not trade but functions solely as a licensing agent for its shareholders which are two of the largest manufacturers of electrical goods in the Commonwealth. It has an authorized capital of £10,000 and its shareholders are Amalgamated Wireless (A'asia) Ltd., and Standard Telephones & Cables Pty. Ltd., infra.

Amalgamated Wireless (A'asia) Ltd.
47 York Street
Sydney, Australia

The Company was formed in 1913 and has an authorized capital of £5,000,000 in 20,000,000 ordinary shares. In association with Standard Telephones & Cables Pty. Ltd., it holds the shares in Australian Radio Technical Services & Patents Co. Pty. Ltd., and it is a substantial shareholder in Grafton Broadcasting Co. Ltd., Telephone Manufacturing Co. (Aust.) Pty. Ltd., Amalgamated Wireless Valve Co. Pty. Ltd., and Manufacturers Special Products Pty. Ltd. Its total assets are in excess of £13,000,000.

The Company is regarded as the leading manufacturer of electronic equipment in the Commonwealth and maintains an annual turnover in excess of £20,000,000 and has more than 5,000 employees. It is the manufacturer of radio

broadcasting and television transmitters with associ-
968 ated studio equipment, sound broadcast and television receivers, appliances, recorders, receiving valves or tubes, picture tubes and a variety of communication and radar equipment.

Standard Telephones & Cables Pty. Ltd.
252-274 Botany Road
Alexandria, Australia

The Company was formed in 1895 as a branch of Western Electric Co. Ltd., London, England and was incorporated in 1912. It has an authorized capital of £5,000,000 in £1 shares. Its total assets are in excess of £11,000,000 and its sales are in excess of £15,000,000 annually. The Company is a subsidiary of International Standard Electric Corporation of New York, U. S. A. and in association with Amalgamated Wireless (A'asia) Ltd., holds the issued capital stock in Australian Radio Technical Services & Patents Co. Pty. Ltd. Subsidiaries of the Company include Standard Telephones and Cables (Q'ld) Pty. Ltd., New Zealand Electric Totalisators Ltd., and Silovac Electrical Products Pty. Ltd.

The Company is a manufacturer and distributor of electronic equipment and telephone equipment having discontinued the manufacture of domestic appliances in the early part of 1962.

Philips' Gloeilampenfabrieken N. V.
Eindhoven, Netherlands

The original business was formed in 1891 and now has an authorized capital of £3,000,000,000. The assets of the Company are in excess of £4,600,000,000 and its sales for 1962 exceeded £5,500,000,000. The Company has over 25 subsidiary and affiliated companies located all over the world and employs 233,000 persons.

969 The group of companies engage in the manufacture, import, export and wholesale of a great many industrial and consumer items such as radio tubes, lamps, household electric apparatus, electronic tubes, radio and television apparatus, medicinal and scientific apparatus and electronic measuring equipment.

Neutrodyne Pty. Ltd.
440 Little Collins Street
Melbourne, C1, Australia

The Company was formed in 1928 and has an authorized capital of £100,000. Its issued stock is owned 70 per cent by Hazeltine Corporation, Little Neck, New York, and 30 per cent by Electronic Industries Ltd. of Australia.

The Company was formed to acquire the patent rights of Hazeltine Corporation of America.

In Canada.

Canadian General Electric Company Limited
212-220 King Street W.
Toronto 1, Ontario

The Company was formed in 1892 and is a subsidiary of General Electric Company (Inc.) of Schenectady, New York. The authorized capital stock comprises 625,000 cumulative convertible preferred shares and 8,178,800 common shares of which General Electric Company of Schenectady owns 95 per cent of the outstanding voting stock. The Company has a number of subsidiaries, including Dominion Engineering Works Limited, Radio Valve Company Limited, Canadian General Electric Export Limited, Montreal Armature Works Limited and W. L. Stevens Limited.

The Company is the biggest and most diversified manufacturer of electrical equipment in Canada. It manufactures a complete range of electrical apparatus, supplies and

equipment, including motors, transformers, heavy in-
970 dustrial equipment as well as household electrical ap-
pliances, radios, television receivers and is the largest producer of incandescent lamps in Canada. As of 1962, its total assets were in excess of $216,000,000, its net sales for that year were in excess of $263,000,000 and its net worth exceeded $144,000,000.

Canadian Marconi Company (Inc.)
2442 Trenton Avenue
Montreal 16, Quebec

The Company was organized in 1903 and since 1953 has operated as a subsidiary of The English Electric Company, Ltd., London, England. The authorized capital stock is 7,500,000 shares and The English Electric Company Ltd., London, England, owns 50.6 per cent of the outstanding stock. Total current assets as of 1962 were in excess of $15,000,000 and the net worth is over $9,000,000. The Company employs around 2,700 persons and has a number of subsidiaries, including Canadian Marconi Electronics Ltd., Canadian Marconi Sales Limited, Telefaximile Ltd. and Canadian Marconi Company (U. S. A.).

The Company has become a leader in its various fields throughout Canada. The important part of the Company's business is in the marine radio field. The Company designs and manufactures marine radio telephone equipment. It also designs and manufactures electronic communications equipment and equipment for the home entertainment field, including radio and television receivers. It markets all types of transmitting and receiving tubes including picture tubes for television sets. The Company owns and operates broadcast stations in Canada.

971 Canadian Westinghouse Company Limited
Sanford Avenue N
Hamilton, Ontario

The Company was formed in 1903 and is a subsidiary of Westinghouse Electric Corporation, Pittsburgh, Pennsylvania. The authorized capital stock is 900,000 shares and 76.1 per cent of the outstanding capital stock is owned by Westinghouse Electric Corporation. The total assets of the Company as of 1962 were in excess of $79,000,000 and net sales for that year exceeded $138,000,000. Its net worth is over $47,000,000. The Company has two subsidiaries: B. F. Sturtevant Canada, Ltd. and Canadian Westinghouse Supply Co. Ltd.

The Company manufactures a complete line of electrical equipment divided into a number of groups such as heavy apparatus, including turbines and generators, light apparatus, such as small motors and consumer goods, including household appliances, radio and television receivers. The Company also manufactures lamps and tubes and employs some 8,600 persons.

Northern Electric Company, Limited
1261 Shearer Street
Canada, Montreal, Quebec (25)

The Company was organized in 1914 with an authorized capital stock of 1,500,000 shares. It is a subsidiary of the Bell Telephone Company of Canada which owns 90 per cent of its stock; the remaining 10 per cent is owned by Western Electric Company of the U. S. A.

The Company has attained a leading position in its field in Canada and manufactures telephone apparatus and equipment, radio transmitting equipment and receiving sets as well as other electronic equipment. As of 1963,

the company was worth in excess of $80,000,000 and its
972 net sales were $281,000,000. The Company employs
16,904 persons.

Standard Radio Limited
37 Bloor Street W
Toronto 5, Ontario.

The Company was organized in 1925 with an authorized capital of 215,000 shares. Originally known as Rogers Majestic Corporation Ltd., its name was changed to its present style in 1951.

As of 1963, estimated gross sales were in excess of $5,000,000. The worth of the Company is in excess of $2,000,000 and it operates as a holding company for three wholly owned subsidiaries: C. F. R. B. Limited which operates three radio stations in Toronto; C. J. A. D. Limited which operates two radio stations in Montreal and Standard Broadcast Sales Limited sells radio time.

Canadian Radio Patents Limited.
200 St. Clair Avenue W
Toronto 7, Ontario

The Company was formed in 1927 with an authorized capital of $50,000.

The Company operates as a patent licensing agency for electronic manufacturers collecting royalties on equipment manufactured in Canada. The Company represents Canadian General Electric Company Limited, Canadian Westinghouse Company Ltd., Northern Electric Company Limited, Canadian Marconi Company and Phillips Electronics Industries Limited and Hazeltine Corporation of Little Neck, New York.

973 *In England*

Electric & Musical Industries Ltd.
Blyth Road
Hayes, Middlesex, England

This is a public company formed in 1931 and has powerful interests in the fields of manufacturing radio and television apparatus, musical equipment, etc.

General Electric Company, Ltd.
1, Stanhope Gate
London, W. 1

The Company was incorporated in 1900 and has an issued capitalization in excess of £250,000,000. Its assets as of 1963 were over £94,000,000 and its net worth over £68,000,000 with sales of all of its groups or divisions exceeding £131,000,000. The Company has in excess of 45 subsidiaries and affiliates the world over, including Osram, Ltd., Machlett X-ray Tubes (Great Britain) Ltd., M. O. Valve Co. Ltd., Salford Electrical Instruments and G. E. C. Semiconductor Division.

The Company is engaged in a wide variety of products including mouldings, electric lighting supplies, telephones, heating equipment, electric furnaces, wireless receiving apparatus, lamps and wireless valves, electric motors, cathode ray tubes, television sets, transmission apparatus, X-ray devices, etc. Employs 80,000 persons.

Marconi's Wireless Telegraph Co. Ltd.
Chelmsford, Essex. (New Street)

The Company was organized in 1897 and the controlling interest was acquired by English Electric Co. Ltd. in 1946. Since that time the Company has functioned as a subsidiary

of English Electric Co. Ltd. Its authorized capitaliza-
974 tion is £4,000,000 and it employs some 11,000 persons.

The Company name was changed to Marconi Company Ltd. in August of 1963. Its subsidiaries are Marconi's Instrument Ltd., Marconi Internation Code Co. Ltd. and Marconi Television Co. Ltd.

The Company is the manufacturer of wireless communication and electronic equipment. Its parent company, English Electric Co. Ltd. is one of the most important electric companies in England. (Changed to Marconi Company Ltd. in August, 1963.)

Murphy Radio Ltd.
Welwyn Garden City, Herts.
Broadwater Road
(Also Brook Street, London, W. 1)

The Company was registered in 1963 with a nominal capitalization of £100. The Company is a manufacturer of radio, television and electronic equipment.

Philips Electrical Ltd.
Century House
Shaftesbury Avenue
London, W. C. 2

The Company is a member of the Internationally known Philips Group headed by N. V. Philips Gloeilampenfabrieken of Holland. It was registered in 1925 as Philips Lamps Limited and changed to its present title in 1947. Its authorized capitalization is £10,000,000.

The Company controls, directly or indirectly Philips Croyden Works Ltd., Research & Control Instruments, Ltd., Philips Hamilton Works Ltd., Philip Records Ltd., Ada (Halifax) Ltd., Mullard Ltd., Mullard Radio Valve Co. Ltd., Mullard Overseas Ltd., Cossor Radio & Television

Ltd., Stella Radio and Television Co. Ltd., Stella Lamp
975 Co. Ltd., Mullard Equipment Ltd., Mullard Blackburn Works Ltd.

The Company markets a wide variety of products in the industrial, medical and consumer fields. The radio, television and record player production of this group of companies employs about 4,000 workers and the Mullard Companies of the group are the largest producers of radio and television valves and tubes in the United Kingdom. The Philips Group has associated companies in nearly every country in the world and ranks as one of the world's leading commercial enterprises.

Pye Ltd.
Cambridge, Cambs.
Radio Works, St. Andrews Road

While originally founded in 1890, the Company was registered in 1929 with an authorized capitalization of £9,000,000. It has some 37 subsidiary and affiliated companies including Pye TVT Ltd., Cathodeon Ltd., Cathodeon Electronic Ltd., and High Definition Ltd.

The Company manufacturers radio and television apparatus and high fidelity gramophones and maintains an active profitable business of substantial extent. They are the best known of their type in the country. They have acquired interests in or from a number of other companies and as a group manufacture radio and television apparatus, studio equipment, telephone communications industrial electronic equipment, domestic appliances, cathode-ray tubes and semiconductor devices.

976 Rank Cintel Ltd.
Worsley Bridge Road
Lower Sydenham
London, S. E. 26

The Company was registered in 1960 with a nominal capitalization of £100. It is associated with Rank Radio & Television Ltd. which holds most of its stock.

The business of the Company is the manufacture of scientific and television equipment and it employs a staff of several hundred persons.

Standard Telephones & Cables Ltd.
Connaught House, Aldwych.
London, W. C. 2

The Company was registered in 1910 to acquire the United Kingdom business of the Western Electric Company of Chicago, USA. Its authorized capitalization is £14,000,000 and its principal shareholder is International Standard Electric Corporation of New York, USA.

The Company are contractors to the General Post Office, Admiralty, War Office and conducts an important business of Telegraph, telephone and radio engineers in all parts of the world employing some 26,000 persons.

Gramophone Co. Ltd.
Blyth Road
Hayes, Middlesex, England

The Company was registered in 1900 with an authorized capitalization of £3,340,000 and most of the issued stock is held by Electric & Musical Industries, Ltd., Hayes, Middx.

The Company acquired from Marconi's Wireless Telegraph Company Ltd. the wireless receiving set manufacturing business. It manufactures television apparatus, gramophones, radio apparatus, household appliances, etc. It occupies a leading position in the industry.

TRANSCRIPT OF PROCEEDINGS.

SAMUEL M. THOMAS, called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Thomas, will you state for the record your name, residence, and occupation?

A. My name is Samuel M. Thomas. I reside at Ridgeview Avenue in Greenwich, Connecticut, and have resided there for the past sixteen years. At the present time, I am senior vice president of the Hazeltine International Division of Hazeltine Corporation, and a vice president of Hazeltine Research, Inc.

Q. The latter company, is that the plaintiff in this action?

A. It is the plaintiff, a wholly-owned subsidiary of Hazeltine Corporation.

Q. Would you give a very brief resume of your 13 education and experience?

A. Yes, sir. In 1926 I graduated from the Georgia School of Technology with a degree in electrical engineering. I became employed by the Allis-Chalmers Manufacturing Company in West Allis, Wisconsin. For approximately six years I remained with the Allis-Chalmers Company in the manufacture, testing and sale of electrical equipment.

In 1930, approximately, I became an employee of the United States Corps of Engineers and, for some ten years, was engaged in various construction and operating positions on the various dams in the west, and particularly in the installation and operation of electrical equipment.

By 1946—by 1940, this was after ten years, approxi-

mately, with the Corps of Engineers, I entered into active duty in the United States Army as a Captain. I served through the ranks and became a Brigadier General after some six years of service, during which time I ended up in Berlin having charge of the operations of all the telecommunications facilities of the Western Zone of Germany as occupied by the American Forces.

I returned to the United States and became employed then by the Radio Corporation of America. I started in as assistant vice president—I beg your pardon; as assistant chief engineer of RCA Communications where my duties were to modernize and improve the radio telecommunication facilities of the worldwide network operated by RCA.

There was some 50 radio circuits operated out of the eastern facilities of RCA, and for some six years I stayed in that capacity, becoming a vice president of RCA Communications, a wholly-owned subsidiary of RCA.

This brought us up until 1952, I believe, approximately, at which time the Korean War was in effect, the activity there. I was called in as a special assistant to the Secretary of the Army to expedite electronic equipment that was required for the Armed Forces.

In March of 1952, I joined the Hazeltine Corporation as an assistant vice president and was shortly thereafter sent to England where we conducted a very large-scale operation in the manufacture of electronic equipment for the Armed Forces, which later was transferred to the NATO government.

I returned to the United States in 1957 and undertook the setting up of a classified survey, and study, and research project for the Defense Department which has continued with Hazeltine for the last several years.

Two years later, approximately, I was made—I was placed in charge of the contracts and customer liaison activities of Hazeltine—what was known at that time as the

Hazeltine Electronics Division, a portion of the Hazeltine Corporation—I beg your pardon; the reverse; that was the Hazeltine Electronics Corporation, a wholly-owned subsidiary at that time. But shortly after it was changed into the Hazeltine Electronics Division of the Hazeltine Corporation, to which name it goes at the present time.

Shortly thereafter, I was given the added duties of vice president and general manager of the Hazeltine International Division, and two years ago I was made the head of that organization, at which point I am still operating but am now a senior vice president in charge of that complete activity, and also—and a year ago, I was made a vice president of Hazeltine Research, Inc.

Q. What is the relationship of Hazeltine Research, Inc. to Hazeltine Corporation?

A. Hazeltine Research, Inc. is a wholly-owned subsidiary of Hazeltine Corporation.

Q. Are you an employee of Hazeltine Research?

A. I am an officer of Hazeltine Research, Inc. but I am not an employee as such, and I draw no salary on that basis from the Research Corporation.

Q. That is, you draw no salary directly—

A. Directly, as such, no.

Q. What is the scope of your familiarity with the operation of Hazeltine Research, Inc. since you indicated you have been directly associated with it only for about a year?

A. Well, ever since I joined the organization—something over ten years ago—I have had the pleasure of working with and knowing the founders of our company, Professor Hazeltine, Mr. Binns, Mr. McDonald, other engineers of the Hazeltine Research, Inc.—HRI, as we speak of it.

And at monthly meetings, I sat in at every board meeting, essentially, during that period except for the time I

was in England and heard the annual—the monthly
18 reports and followed the activities of the research group as much as I did any other portion of the company, although my time was not specifically spent in the HRI activities.

Q. Can you state whether or not it was customary to receive the reports of the operations of HRI at the monthly meetings of which you spoke?

A. Yes, it was. I rendered my report for my particular activities and the other portions of the corporation—reports were delivered each month, and I of course was present at each of these monthly board meetings except for a few occasions on which I could not attend.

* * * * *

22 By Mr. Dodds:

Q. All right. Mr. Thomas, would you describe briefly the character of the present operations of HRI?

* * * * *

A. I will describe the nature of the operations, yes, sir. We have a laboratory in Chicago which does considerable activity and work in the radio and television field in perfecting circuits, and improving and assisting our
23 licensees. We make available to our licensees the services of not only those people that are employed directly by Hazeltine—HRI, but by the parent company, and by another research division of the company located on Long Island. We do considerable work in that activity, and are continuing to do so.

Q. Do you know, of your own knowledge, what activities of the same general character have been carried on since you first joined the Hazeltine organization in 1953?

A. Yes, sir. I have been associated with them during the period—indirectly I have, yes, sir. I have known the laboratories that have existed in Chicago since 1928. We have had laboratories on Long Island, and still have. We

have a facility on the West Coast to service our licensees out there.

Q. Do you know of your own knowledge, or from an examination of official records, whether or not these activities continued back to the time when the present invention was made in the latter part of 1945?

A. Will you repeat that question, please?

24 The Court: Will you read the question.

(Question read.)

By the Witness:

A. Yes, I do, from an examination of records.

By Mr. Dodds:

Q. Has that examination of records—

A. And personal contacts with people that were associated with it.

Q. Do you know the general nature of the patent in suit, the Loughren patent 2,547,648?

A. Yes. I know in general that it is a circuit that gives you automatic gain control in your television circuits; yes, sir—color contrast.

Q. This may be a duplication, but did you indicate that the laboratories—I believe—rendered technical assistance to licensees of HRI?

A. Yes. I know that to my own personal experience, since I have been an employee of HRI. I have been in our laboratories in Chicago during the past year, and have actually seen television sets in there that were undergoing tests, and being given—we were giving the companies technical assistance to evaluate them, and to help them

25 get new models in production.

Q. Do you know whether or not from the time you joined the Hazeltine organization in 1953, the Hazeltine Laboratories and its associated companies which you have

described have carried on any research and development work in addition to the technical assistance?

A. Yes, sir. They have—they certainly have—outside of the television field, or in the television field, do you mean? Both, as a matter of fact.

Q. I was interested particularly in the television field.

A. Yes, sir, they have.

Q. Do you know the general nature of the current licenses that are in effect, granted by HRI?

A. Yes, sir, I do.

* * * * *

28 By Mr. Dodds:

Q. Now, are you familiar, Mr. Thomas, with certain of the licenses which have been granted by HRI, and are in effect, and as to whether or not they do or do not include a license under the Loughren patent in suit?

A. Yes, sir. I have examined, certainly, a total of nine that include the use of the Loughren patent.

Q. You say includes the use of the Loughren patent?

29 A. That are exclusively for the Loughren, cover only exclusively. There are others.

Q. Are you familiar with any of the licenses granted which include the Loughren patent as well as other patents?

A. Yes. The Admiral Corporation and RCA include more than the Loughren patent. There are nine having, as I said, only the Loughren patent.

Q. Could you name some of the principal licensees that have a license with respect only to the Loughren patent in suit?

A. Yes, sir. There is Giannini Control Corporation, there is Magnavox—

Q. Excuse me—

A. That's known also as Conrac.

Q. Conrac, yes.

Q. Conrac. Curtis Mathes.

A. Conrac. Curtis Mathes.

Q. Where are they located?

A. Curtis Mathes—I cannot answer, sir. I have looked at the—I have examined the license, and it is on the first page of it. I can tell you—the state is listed, but it escapes my memory.

Q. All right. I interrupted you. You were naming some other companies.

A. Yes. Magnavox, Packard-Bell, Wells-Gardner, Westinghouse.

Q. With respect to Wells-Gardner, do you know whether they sell receivers principally under their own name, or do they sell principally brand name merchandise—

A. Yes, they do sell brand name items.

Q. Do you know for what concern principally?

A. Well, there are two involved; not only Wells-Gardner; but Warwick sells to Sears—sells Sears, as Wells-Gardner produces for Montgomery Ward.

Q. I interrupted you. You were naming other companies.

A. I believe I have covered about seven or eight there. There are a total of nine.

Setchell-Carlson—it was a new concern to me; the name Setchell-Carlson.

Q. Do you know whether or not Sylvania—

A. Sylvania is included.

Q. Do you know whether or not Westinghouse—

A. Westinghouse is included; yes, sir.

Q. Do you know approximately the royalty rate which is paid with respect to the Loughren patent in suit?

A. Yes, sir. .95 is the percentage, but that has been reduced to something half of that. It is less than ½ of 1 percent when you get down to the value of a television set.

Q. What does the .95 you mentioned—what does that apply to?

A. This applies to that portion of the set—a certain portion is exempt from it, such as—

Q. What I am getting at is, you quoted two rates. Will you tie this up with what patents are involved?

• • • • • •

33 By Mr. Dodds:

Q. What is the basis of your understanding of the licenses to these various concerns, as to which you have testified? Have you looked at the license agreement, or are you taking somebody's word for it?

A. Oh, I personally examined them, and most of them are printed on Form 918 by number, and 417—there are a couple of them. But there are additional documents that definitize the payment to be made. I have examined them. I am not expert in it, but I have certainly examined them to a reasonable extent.

• • • • • •

34 By Mr. Dodds:

Q. Do you know, Mr. Thomas, the magnitude of expenditures of HRI in its research, development, and technical assistance to its licensees during the ten years that you have been with Hazeltine?

35 A. Yes, sir.

• • • • • •

Objection overruled.

By Mr. Dodds:

Q. Would you so state?

A. Yes. There has been spent here more than eight million dollars in giving technical assistance to our licensees and in research and development work during the past ten years.

The Court: During what period of time?

The Witness: During the last ten years.

Mr. Dodds: I asked during the last ten years he was with the company.

The Court: All right.

By Mr. Dodds:

Q. Was that money all spent directly by HRI, or was it spent indirectly or—

A. The records indicate that part was spent by
36 HRI, and part by—portions of our parent company, and the other research corporation—the Research Division of our corporation. We called on them for assistance. Any facility or any capability of the Hazeltine Corporation was made available to HRI to assist our licensees.

* * * * *

By Mr. Dodds:

Q. Can you tell us what the total television receiver production in this country has been since World War II?

* * * * *

39 By the Witness:

A. Well, the figure, starting in 1947, starts at about 200,000 sets a year. And by 1950, it had risen very sharply to over seven million sets produced a year, 7.4, as a matter of fact.

And the curve will show up and down through 1961, averaging five, to six, to seven—on our high point in 1955 of seven and three-quarter million sets a year.

These total up to approximately 82 million sets in the last 15 years.

* * * * *

THE FOLLOWING EVIDENCE AND EXHIBITS PERTAIN TO THE ANTITRUST AND MISUSE ISSUES.

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

TRANSCRIPT OF PROCEEDINGS

had in the trial of the above-entitled cause, before the Honorable Richard B. Austin, one of the Judges of said court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, February 17, 1964, at 10:00 o'clock a.m.

Present:

Mr. Laurence B. Dodds (59-25 Littleneck Parkway, Littleneck, New York), and Mr. Bartholomew Diggins, and Mr. Edward A. Ruestow, on behalf of the Plaintiff;

2 Messrs. McConnell, Curtis & McConnell (134 South LaSalle St., Chicago, Ill.), by: Mr. Thomas McConnell, and Mr. Philip J. Curtis; and Mr. Francis W. Crotty (6001 W. Dickens, Chicago, Illinois), on behalf of the Defendant.

3 — The Clerk: 59 C 1847, Hazeltine Research vs. Zenith Radio, trial.

The Court: Are you ready, Mr. Dodds?

Mr. Dodds: We are ready.

Mr. McConnell: Cross-claimant is ready, your Honor.

Mr. Dodds: I would like to make just about a one-minute comment on counter-plaintiff's pre-trial brief.

The Court: Anybody can say anything they want to at this time.

Mr. McConnell, do you care to say anything in addition to what you have said in your brief?

Let me assure counsel, perhaps to their surprise, that I have read them both.

He wants to make comment on your brief and maybe you will want to comment on his comments before he gets through.

Mr. McConnell: I haven't anything to add, your Honor, to our brief.

The Court: All right.

Yes, Mr. Dodds.

Mr. Dodds: Just a couple of very short ones. I just want to characterize it that I believe their pre-trial brief is one of the most distorted documents that it has been my misfortune to have to read. I believe that it is a veritable tissue of misstatements, half truths, and statements misleading because they are out of context and I would like to cite just a couple of examples.

A good deal of attention is paid to some statements which Mr. Ruestow made in memoranda in his personal file, but the majority of those statements relate to and criticize a document which was abandoned and dropped and never was the policy of Hazeltine at any time. It was just a discussion relating to a conversation piece, as you might say.

Now, at Page 31 of this brief, Mr. McConnell mentions that General Electric and Westinghouse and the Philips Company of Andoven, as he puts it, were ordered out of the Canadian pool.

Now, we have with us copies of the judgments. This is an antitrust action, you will recall, by the Government against these three concerns based solely on the Canadian pool, and the consent judgment is quite to the contrary. While they are reciting certain things they may not do, it says, "The provisions of this Section 4 shall not

be construed to prohibit without more patent license agreements or assignments," and that is just the subject matter that was actually in dispute, as the judgment will show, and these documents will be exhibits in the case.

Then at Page 33 of the brief there is a reference where they said that I had personally participated in negotiating extensions of this illegal pooling arrangement, and he is talking about the British pool. And that is absolutely contrary to fact. I never participated in any negotiations of any British pool at any time, and I think that Mr. McConnell knows this.

At Page 47 and Page 48—

The Court: Of course, as I understand it, this is a pretrial brief, and as I understand it, this, of itself, is not evidence.

6 Mr. Dodds: That is right.

The Court: It is perhaps in the nature of an opening statement advising the court what they anticipate the evidence will show, and as I instruct juries, I will so instruct myself, that anything that is not later borne out from the witness stand in the way of evidence will be disregarded by the court in regard to what was said in the opening statement.

Mr. Dodds: That was really the only purpose of my statement.

The Court: I have already instructed myself to disregard anything that is not borne out by the evidence.

Mr. Dodds: Okay. Thank you.

Opening Statement on Behalf of the Counter-Plaintiff by Mr. McConnell.

May it please the Court?

The Court: Yes, Mr. McConnell.

Mr. McConnell: I represent the cross-claimant, Zenith Radio, and Mr. Curtis is here associated with me.

7 The Court: Let's have a little understanding. We are going to hear evidence on the misuse and on the counter-claim, right?

Mr. McConnell: That is my understanding.

The Court: Are they going to be sort of woven together or will they be separated?

Mr. McConnell: Well, I am going to try to separate them as much as I can. To some extent it is impossible. It is all interwoven.

The Court: I didn't know what your plan of approach was.

Mr. McConnell: Well, I thought I would approach it from the cross-claim first, and then along with that, at the end, if I can, distinguish the misuse issue.

The Court: Very good.

Mr. McConnell: And I think that maybe an opening statement will be helpful there, and as your Honor noted, the brief is—we believe that the brief will be borne out by the evidence, but I don't care to argue the evidence at this time.

The Court: There is no evidence to argue at this time.

8 Mr. McConnell: No.

As I say, Mr. Curtis and I and Mr. Crotty represent the Zenith Radio Corporation in the cross-claim, and it is based primarily on Section 1 of the Sherman Act and its concomitant or parallel Sections of the Clayton Act.

We have alleged and set up a conspiracy here to restrain commerce between the United States and foreign nations,

and we are particularly interested and involved with the trade of the Zenith Radio Corporation in radio and television sets between their plant in Chicago and in Canada and England and Australia, those three countries.

Section 1 of the Act, as your Honor knows, expressly refers not only to commerce between the states, interstate commerce, but also refers to any conspiracy, combination or contract which has the effect of restraining commerce between the United States and foreign countries. And that sort of case doesn't come before the courts too much, and sometimes—

The Court: Let me assure you it is the first one that has come before me. I will be happy to get as much help from you regarding that, having that in mind, Mr. McConnell.

Mr. McConnell: It has come before this Court—not this Judge, but this Court. And some reference will be made to that in the evidence, I believe, because we have a stipulation here in the record, in the Zenith case; part of it, portions of it are to be considered as in evidence.

As I say, the instant cross-claim alleges a conspiracy between the Hazeltine Corporation, and we have a stipulation in the record that the Hazeltine Corporation and its subsidiary companies are to be considered as one company in this proceedings. So we don't have to bother with whether it is the Hazeltine Research Corporation or the Hazeltine Corporation. There are three companies, I believe, and all of them are involved here under our arrangement with counsel, Mr. Dodds, that they are all to be considered as one company.

We will start in our proof with the situation in England, and there isn't really much dispute in the evidence. I don't see how there can be much dispute in the evidence, because practically all of it is documentary, either in the sense of agreements between different parties, or letters of which Hazeltine is a party and much of the evidence comes from

the Hazeltine Corporation files. We have had quite a bit of discovery. We have been all through their files on this issue, and we have had Mr. Dodds' deposition. And there may be a dispute as to the meaning of the evidence and conclusions to be drawn from the facts and the inferences from the facts, but the ultimate underlying facts I don't see how there can be a great deal of dispute on.

For a period of some 35 years, the proofs will show, there has been in England a pooling arrangement so
11 designated by written agreement betweeen the parties that created it. And those agreements will be in evidence, each one. They run from up through the A.8 pool, I believe, and, as I say, they cover a period of some 35 years.

The Court: One of the Hazeltine companies is a party to the pooling arrangements?

Mr. McConnell: Yes, they are, and I will develop how they are a party.

The Court: All right.

Mr. McConnell: The proofs will show that the main signatories to these agreements through the years have constituted the holders of practically every patent in Great Britain that has anything to do with the electronics field, either in radio, or television, or color television. And some of the patents get in there through other holders. For instance, German patents get in there, Telefunken and Company, and the German General Electric patents get into this pool through the English Electric Company and the RCA patents get into the pool through English Musical Industries Company, and the Hazeltine patents get into the pool through General Electric Company—which is
12 not our General Electric Company, but the General Electric Company of England.

13 There was an express agreement between the Hazeltine Corporation, which we will introduce in evidence—

a written agreement signed by Hazeltine in which General Electric Company was authorized to seek the admission of the Hazeltine patents into the pool, and an arrangement was made whereby the two contracting companies were to split the returns of the money received from the pool, fifty-fifty between them.

The Court: Are these Hazeltine British patents?

Mr. McConnell: These are Hazeltine British patents. They are the counterparts of patents which are registered in the United States Patent Office.

The Court: I mean, that was going to be my next question. Some of these British are identical with the United States patents?

Mr. McConnell: I think they are all identical.

The Court: All right. That answers my question.

Mr. McConnell: They are all counterparts.

The Court: All right.

14 Mr. McConnell: And under this agreement with General Electric Company, General Electric Company was authorized by Hazeltine to seek admission into the British pool. And they sought admission and obtained it in a number of the pools, and they are in it now, right down to the time of the trial of this cross claim. And under their latest plan, I think they received forty per cent instead of fifty per cent—forty per cent of the amount assigned by the pool to the combination of General Electric and Hazeltine patents which are placed in the pool.

The Court: That is, one of the Hazeltine Companies gets forty per cent of what is paid into the pool?

Mr. McConnell: That's right.

The Court: For the use of Hazeltine patents?

Mr. McConnell: Right.

The Court: All right.

Mr. McConnell: Now, wait a minute. They get forty per cent of the joint take of all the General Electric and the Hazeltine patents.

The Court: All right.

15 Mr. McConnell: The two companies pooled their patents, put them into the pool, and under their arrangement they get forty per cent of the—

The Court: General Electric gets sixty per cent and Hazeltine gets forty.

Mr. McConnell: That's right.

The Court: All right.

Mr. McConnell: And by agreement, the pool members—and they constitute, well, the Philips Company is in there, English Electric, English Musical Industries, the German companies, and Pye Company of England—practically every concern that has any patents at all have pooled them in this pool.

From the very beginning of the pool—and the evidence will show that Hazeltine knew this from the outset, and has known it all the way through; that Mr. Dodds went over, negotiated at one time the arrangements in this pool, made analyses of the different pools and the agreements and their restrictions, and notes the restrictions on imports, exports.

And in all of these pools, it is provided in there output
16 licenses that there shall be no licenses granted to any company to import any sets, or any sets that come into England by import cannot be licensed under any of the patents in this pool. There is also a restriction on exporting of any sets that are licensed by the pool. So that there is a complete stoppage of any import or export by any company who is in the pool or is licensed by the pool.

The Court: A minute ago, you used pool in the plural form, and that confused me—"studied these pools." And now we are back to a singular pool. Are there still pools or is there just one pool now?

17 Mr. McConnell: There is reason for that confusion.

There is only one pool, really. It has existed, as I say, for a period of about 35 years—I think 1927 was the first

time they pooled, but the pool agreements themselves would run for, say, four or five years, and then they would have to be renegotiated. So there are about eight—A.1, -2, -3, -4, -5, -6, -7—the last one I believe is A.8.

The Court: Which is just sort of renewals of the original?

Mr. McConnell: That's right. Every one of them had the same provisions to export, import; the same provisions, the same standard license all the way through.

The Court: As I understand it, possibly some companies came in later than other companies, and possibly some of them dropped out?

Mr. McConnell: That's right. I don't think any have ever dropped out, but I think some joined that were not there originally. I know one of them—Pye—did that, and the Philco Company got its patents into the pool at one time, after it had been barred and found it impossible to do business. It attempted to meet the requirements of the
18 pool by manufacturing in England.

Now, the proofs will show that as a practical matter, the only way anybody that wanted to be in the business of selling or manufacturing radio or television sets in England would be to manufacture them in England. It was impossible under this arrangement for the Zenith Radio Corporation to manufacture sets in Chicago and put them into commerce and send them over to England and sell them, because they couldn't have any protection at all against any of the patents in that pool. And there were thousands of patents, which the proofs will show, that are involved. They would be in continuous litigation. They would never free themselves from the litigation which was possible for the pool to provide.

The Court: I mean, litigation in England?

Mr. McConnell: In England, litigation in England which would prevent any distributor—the proofs will show that

our distributors, people we sought to distribute our goods, refused, couldn't distribute them, because of the threat they would be sued immediately by the pool if they at-
19 tempted to handle any radio sets or any television sets produced by Zenith and put into interstate commerce. And there was no way in which Zenith could obtain a license from that pool, no matter how much they offered, or what they paid, because no license under the terms of the pool and the agreement of the license—no license could be issued which would permit the use of any patent or any invention covered by any patent in a set which was imported into Great Britain. It was just as strong as that. There were no exceptions to it. You could not import.

And our proofs will show that as a result, the Zenith Radio Corporation, which is, the proofs will show, the first in television in this country in number of sets produced and sold, and it is a very close second to RCA in radio in the number of sets produced and sold, couldn't sell a thing.

The Court: Is it my understanding—maybe I shouldn't ask the question; maybe I ought to know the answer—is selling a Zenith set in England a violation of the English patent laws so that that would become an infringement of the patent?

20 Mr. McConnell: Yes, sir. The patents cover three things; the manufacture and the sale of the sets—

The Court: So that a manufactured article in the United States using some of the patents that are in the English pool, and shipping it to England, that of itself becomes an infringement?

Mr. McConnell: Right. We couldn't sell it. As soon as we sold it, even though we were covered by the Hazeltine patents,—

The Court: I understand that—here.

Mr. McConnell: Here. When we sold those foods in England, we violated the patents which were in existence in

England owned by the pool, which had been placed in the pool, and the pool was slicing the import of sets into England.

The Court: I mean, there was some substantial hope that the pool would be successful in an infringement suit in England on a set made in America and shipped to England?

Mr. McConnell: No defense to it.

The Court: That answers it. I don't purport to be a patent expert either.

21 Mr. McConnell: I say, there is no defense to it, assuming that we were using apparatus which infringed their patents. And with all these companies together, it was a certainty that somewhere we would be infringing something. There would be some patent that would be covered, and many of the patents were ones we already thought we had to have a license on in the United States. But we could not sell.

22 The Court: All right.

Mr. McConnell: Even though there was no embargo on our goods by any governmental agency.

Now, since—oh, in the last four or five years, and since our RCA litigation, as a result of which we obtained licenses from RCA under their foreign patents, as a result of the settlement, we have been able to sell radios to some extent in England.

The Court: Those are radios made in this country and shipped in?

Mr. McConnell: Yes. Radios, not television.

The Court: I understand. But they were manufactured here and shipped to England?

Mr. McConnell: And shipped to England and sold there. And there were two reasons which permitted us to do that on a limited basis. The first was that most of the patents which have to do with radio have expired by lapse of time;

that is; the art is pretty old in the radio business, and people have been producing radio sets for a long long time. And practically every patent, as the correspondence shows, that was held by the pool in radio has gone by the board just by lapse of time.

23 The Court: So that you didn't get much in the way of relief from RCA.

Mr. McConnell: We didn't get much, but what little we had was enough to justify us in some small way in going into the British market. Still we couldn't obtain distributors of the character necessary to promote and to sell and to really create a market for a product as good as that produced by the Zenith Radio Corporation.

The proof will show that even in radio, we were in constant trouble, and had constant difficulty in selling our products. So far as television is concerned, we couldn't sell anybody for the reasons which I have stated to your Honor.

Now, the proof will show that Hazeltine had direct absolute knowledge, knew all the time that these restrictions were in force; knew there was no way in which anybody could be licensed under a license from the pool or the pools —I call it one pool because it is the same parties continuing through these numerous agreements.

24 There is no question at all but what the Hazeltine Corporation had absolute knowledge from the very first moment that they joined, and to the end of the line, of what this scheme and plan was. And we have some correspondence which characterizes it. While there is nothing in the law which permits it, still, the English people and the English manufacturers and then English companies do not want any imports to compete with their home grown products. And this is the method which they have used to stop that.

Now, I think I have mentioned this before, but RCA patents were in this pool: the General Electric patents were

in it; at one time, the Telephone Company patents were in it, and the Philips Company, which is the General Electric Company of Europe—it is one of the largest companies in the world; it is the dominant electrical company of Europe, certainly; their patents were all in it, and it was a simply overwhelming group of patents in this pool, all licensed under a single standard form of license. And it was a situation where the pool could—even though you could defeat one particular action for infringement, it was a constant thing. They wanted to utilize all the patents which could be applied to the art, why, you would be in litigation from now on out. You would never be through, and no company could stand that sort of an attack, and no distributor could stand it either, no local distributor.

And the correspondence throughout is full of the threats and methods of stopping this sort of attempt to gain access to a British market.

Now, in general, that is what the proof will show so far as the English market is concerned. And we will have computations here to show what we had a reasonable expectation of doing in that market, based upon what we have done against comparable competition in the United States; the same kind of products, the same kind of sets, the same kind of competition. Probably in the American market, the proof will show it is supplied by a better product than they have in England. I think that the sets you buy here in Chicago—I would say they are certainly better than anything you could buy in Europe. So that from a product standpoint, we were a competitor equipped to compete with the best there was in the world. And from that assumption, we will have expert testimony to show what we should be able to do in that market if we had ever been able to gain access to it. And, of course, our proofs in that respect fall within the realm of the rules laid down by the Supreme

Court in the Bigelow case, where a market is completely destroyed, and where the parties that are in the conspiracy have destroyed it. That sort of proof is admissible.

Now, so much for the English. I don't want to go into the detail of the evidence. We will get to that in the proofs, but so much for the overall. It isn't a conspiracy that you have to infer. It is shown by written documents, and it is shown to be a plan. And the scheme back of it is to stop the import into England of television sets and radio sets. And the Hazeltine Company, the proofs will show, joined the plan, accepted the fruit of the plan, and the proceeds from the licensing of their patents under this plan, and agreed not to license them in any other way.

Now, so much for the English situation. We had a similar situation in Canada that was the subject of litigation between the Zenith Radio Company and RCA and General Electric, Western Electric Telephone Company in a suit that was tried here and settled.

In that situation it is practically the same thing. It follows the same pattern, the same line. They have a pooling of the patents of the leading electronic companies, General Electric Company of Canada, Western Electric Company of Canada, the Westinghouse Company of Canada, the Philips Company or the Majestics Company, which was the Philips Company, in Canada. Pye got in it finally, that is an English company in the electronics field. And there again we find that the pool agreements themselves provide that no license will be granted by the pool in any of these patents, that none of the participating parties will license anybody except under the standard form of license of the pool, and that standard license provided in the very beginning, some 30-od dyears, that while in the early days I think imports were permitted up to $200,000 at one time, there was one license agreement for $100,000 and one for $200,000, but in later years there has been an absolute for-

bidding of any import except a minimum number of components to be used.

But generally speaking, in any year that is involved in this litigation, there has been an absolute prohibition of any imports into Canada. And the pool has made statements from time to time that no licenses will be issued to anyone who does not establish a factory in Canada and manufacture their goods in Canada.

30 The Court: And, again, these patents are identical with the United States patents?

Mr. McConnell: Exactly the same.

The Court: All right.

Mr. McConnell: Same numbers. In fact, one of the patents in the Canadian pool is the identical patent that is being sued on in this suit. I mean, it is the identical invention. It is the counterpart of the same patent. It is identical—the description of the invention is identical with the one that is in suit in this case.

So through the years there has been this prohibition of any import into Canada. And, again, Zenith Radio was unable to import anything into Canada.

By stipulation there is in this record the result of that suit which was tried here, and the damages in that action for our losses in Canada were affixed by a stipulation and agreement at ten million dollars. That was a settlement figure which was paid for the damages occasioned to Zenith Radio up to the time of the settlement of that suit, which was in 1957, on account of being excluded from that market.

31 Now, at that time, and as part of that settlement, the RCA patents were withdrawn from the pool. RCA then gave us a license subsequent to 1957 on their foreign patents for the respective lives of the patents, which they then had in that pool, or which were being licensed through the pool, and so that RCA no longer stayed in the pool.

Also, General Electric to a certain extent, granted us immunity under their patents, but they still stayed—the General Electric Company of Canada still stayed in that pool, and the Hazeltine Company still stayed in it right straight through, right up to now, and then they renewed their agreements, right up to 1964. And their patents in Canada can only be licensed through the pool and can only be licensed under these restrictions. And the proofs will show that if we took a license from Hazeltine in the United States we would recognize the invention. We would estop ourselves from contesting the validity of the invention of the patent, and we just completely make ourselves defenseless to any sort of a patent proceeding in
32 Canada on the Hazeltine patents.

We can't get a license from the Hazeltine Company in Canada because their patents are licensed through the pool, and the correspondence will show that where their patents have been placed in pools they will not license except in accordance with the plan and scheme and the standard license of the pool itself, and that is shown in their own correspondence, which will be introduced here in evidence.
33 So that it is impossible to be licensed under the Hazeltine patents to sell any product which we make here in Chicago, in our plant here in Chicago. And, of course, it acts as—it just cuts the stream of foreign commerce like it is cut with a knife. There is nothing you can expect that can be sold there without subjecting yourself to the risk of litigation on the Hazeltine patents. And in color television that claim has been made that those color patents will be asserted against us, and the proofs will show that also.

And I say that that is not something that has existed and has come to an end, it still is existing and it still goes on and the Hazeltine Company is still in and Mr. Dodds

is very familiar with that. His fingerprints are shown all the way through the documents of the thing, written to him, back and forth, and he knows all about it, and the proofs will so show.

Then we get to Australia, and in Australia we have the same thing, we have a pooling arrangement, practically the same companies involved. I don't think any of them I have mentioned aren't involved in the Australian
34 pool also. Again, the pool is created by written documents and again their standard license prohibits, by its express terms, the import and the export and any foreign trade in the subject matter of these patents, which are radio sets and television sets. And, again, we find that the Hazeltine patents are in the pool and they receive money from the pool. They were put in the pool through the Neutrodyne Company, of which they own 70 per cent of the stock, and the payments from the pool are sent back to the Hazeltine Corporation. Again, our claim there is that our trade has been disrupted, cut off. We can't sell anything in Australia.

Now, here are three of the largest markets outside of the United States which we are kept from and kept from developing or working up our trade by this sort of an arrangement which we say violates the antitrust laws of this country.

Now, aside from the pools which I mentioned and which disrupt our trade, we were faced here in the domestic situation with a demand by the Hazeltine Company that
35 we sign what they call their standard license. The first license that was offered to us was a license which we designate and characterize as a package license. The courts have so characterized such a license.

The Court: This was submitted to you when, Mr. McConnell?

Mr. McConnell: Well, this was submitted at the time

that our—we were licensed under Hazeltine patents up to 1959.

The Court: That is what I mean. For how long prior to 1959 were you licensed?

Mr. McConnell: Under Hazeltine patents?

The Court: Yes.

Mr. McConnell: I think we were licensed about 10 or 12 years.

The Court: All right.

Mr. McConnell: And we were licensed under their patents during—

The Court: That was always on a package deal basis?

36 Mr. McConnell: On a package deal, that is right.

Now, we came down to 1959 and our license expired, and that was after we had finished our litigation with RCA and these other companies, General Electric and the Telephone Company, and they came to us and wanted us to take a license under their patents in a package license.

Well, there was discussion back and forth about the validity of the patents, for one thing, which on this phase of the case is not particularly important, but the only thing that was at first offered to us was a package license under which we took all of the patents. And the significance of a patent license is that, as the courts have expressed it, one patent borrows strength from another, and the license fees are not computed in the court with any evaluation of any given patent. And the Supreme Court has said that the patent act is designed to reward an invention, where a person makes an invention. It is not designed to reward a combination of inventions, but it is designed to give a

37 return to the particular invention which is patented, and you can't join one with the other. Now, I don't care to argue the law on that at the moment, but I am just indicating what our theory of it is.

Well, they came to us first, as I say, with nothing to offer except the standard license, a package license, and then there was discussion—

The Court: Now, are you talking about 1959?

Mr. McConnell: I am talking about 1959.

The Court: Which was the kind of license that you had had for ten or twelve years before that.

Mr. McConnell: Right, that is right. We had had a package license up to that time.

The Court: Yes.

Mr. McConnell: Of course, a lot of things have changed in the meantime, a lot of patents have run out as far as the radio field was concerned. As their own documents show, they had very little left to offer.

But, anyway, they put all the patents together in a package license, and that is what they offered, and we
38 could take it or leave it. We talked about it for a while and said that we weren't interested in a lot of patents which had no application to our sets. There was some talk about licensing on less than the package. And then the proposal was made that there would be a package license which we could have for X dollars, and we could have one license on one patent for fifty per cent and we could have two for eighty per cent, and then if we had three or more we had to pay more than the package license.

39 Now, I don't care to argue the law on that at the moment. We say that that is an illegal licensing arrangement, that it cannot be justified under the law and constitutes a misuse of the patents. That was the situation up until the time that this suit was brought. We refused to accept that proposal.

The Court: Let me stop you here. In regard to a certain amount, was that certain amount a percentage of your total production?

Mr. McConnell: Yes, on everything we produced. It was a royalty regardless of whether the set had components which weren't under any patents whatever. The amount was fixed on a percentage of the sales price.

The Court: Is this a maximum or a minimum?

Mr. McConnell: They had a maximum, and the maximum —you reached the maximum if you took over three patents.

The Court: I understand that.

Mr. McConnell: And it is our contention that there was no effort made at any time to evaluate any particular patent, it was merely a device to force us to take the whole package. And as soon as we took the whole package, 40 then we acknowledge the validity of patents and their counterparts all over the world, and just left us completely defenseless as to the validity of any patent which they included in their package.

The Court: I realize that that is the law in regard to patents in this country; is it also the law in regard to the British counterparts?

Mr. McConnell: I don't think so, but I don't know. They have no antitrust laws which are comparable to ours.

The Court: No, I am just talking about the validity. You say, and I am sure, that one who has a license can't contest the validity of a patent.

Mr. McConnell: I don't think we can contest it in England or Canada or Australia if once we admitted their validity here.

The Court: But, of course, technically, you are not a licensee under the British or Canadian or Australian—

Mr. McConnell: That is true, but we would be a licensee under the counterpart of the patent, and I believe the 41 law is that we would thus admit the validity.

The Court: I am just making an inquiry to satisfy myself. Go ahead.

Mr. McConnell: Now, this is sort of a brief sketch of

what the proofs will show, but I think it indicates all that I should indicate in an opening statement. That is what our proofs tend to show.

There is, as I say, quite a bit of documentary evidence and I expect to start with the reading of admissions of Mr. Dodds in his deposition on these issues.

The Court: Have you an opening statement that you would care to make, Mr. Dodds?

Mr. Dodds: Yes, I would, you Honor, if I might.

The Court: All right.

42 Opening Statement on Behalf of the Counter-Defendant by Mr. Dodds:

In fact, I welcome an opportunity to meet some of these points which are repeated from the brief.

First of all, Mr. McConnell was talking of Great Britain; Hazeltine is not now and never was a member of the British pool. It's never had any participation in its policy making or in the formulation of its policies or its licenses. There are now and there have been for more than thirty years general industry wide patent pools in Canada, Australia and Great Britain. Those are consonant with the laws of those respective countries. If you want to do business in patent licensing in those countries, you have to do it through the pools or you don't do it, because industry for such a long period of time has accepted this principle; they take one license and pay one royalty and all their patent problems are ended. Now, we may criticize and say that that is not the way to do business—

43 The Court: I mean, it is not the law, it is just the way to do business.

Mr. Dodds: It is the way to do business, but my point is that it is not illegal under their laws.

The Court: I understand that.

Mr. Dodds: And so as a practical matter you have to do business that way if you want to do business, and under their laws it is perfectly legal.

We will show that with respect to certain of these countries where it has been expressly accepted by governmental bodies as being a perfectly proper type of operation. To the best of our information it has never been attacked by the government in any of those three countries. It is a long standing arrangement. That is the way they like to do business.

The Court: You say that Hazeltine is not in any pool there. Let me ask you this, are any of the counterparts of the American patents in the pool?

Mr. Dodds: Yes, they are.

44 The Court: All right, that answers my question.

Mr. Dodds: Yes, they are.

The Court: All right.

45 Mr. Dodds: And the point is this, our patent law, Section 261 of the 35 U. S. Code, says that a patent shall have the attributes of personal property. What we at Hazeltine have done have effectively sold its personal property to these pools. It is just as if we sold them office furniture, or it is just as—let me draw an analogy: If we were to rent a house here in Chicago knowing that it would be used for gambling purposes, we would be violating the law, but if we rented a house in Las Vegas knowing that it was going to be used for gambling purposes, we would not be violating a law either of Illinois or of Nevada. The point is that what we are doing is selling these chattels, you might say, to these foreign pools which operate consistently with their laws.

Now, one thing I think that must be kept clear, I think that confusion has been introduced by the fact that there is talk—Mr. McConnell speaks repeatedly about these pools keeping out sets. These pools don't have any power to

keep out anything. They are not a government body. All it means is that if you import goods into Great Britain
46 or Canada or Australia, and if what you are importing are infringements of the patent they administer, you may subject yourself to an infringement suit, the same as if you infringe a patent in this country. And we can't prevent Zenith from selling acts without an adjudication, which we are in the process of trying to get now. We believe they infringe. We don't have any power to stop them. The pools don't have any power to stop importation. But the only thing is, if the importer or the exporter in this country takes the risk that if he is infringing patents of those pools he may get himself an infringement suit.

Actually, we believe that Mr. McConnell is in something of a paradox. We wonder why he is so concerned about the infringement of the Hazeltine patents in Canada where they flagrantly violate the patents in the United States. What is the difference?

We submit that the only thing there is to that they do not want to pay for either case. They don't want to pay for patent property which they are appropriating and using. It is much nicer to use that without paying for it, and
47 that is what they want to do here. That is what they want to do in Canada, and that is what they want to do in Great Britain, and that is what they want to do in Australia.

Actually, and this is a fact which I think will be brought out, the most important obstacle to the exportation of radio and television sets in Canada and Great Britain are large tariffs, customs duty. It makes it impractical. And there is another factor: Take television sets. I think that you will recall during the infringement aspects of this case there was some talk about positive modulation and negative modulation. It so happens that Great Britain adopted positive modulation for its standard. It also adopted the standard of 405 lines per picture.

This country adopted negative modulation and 525 lines per picture. Therefore, a set that is made for the United States market will not work in Great Britain It has to be a specially designed set. That means additional cost.

48 I think the Court can take judicial notice that normally a United States company's export business is only a small fraction of its total business, and if that small fraction has to be redesigned and designed to fit a special market, its costs go up. You add to that a very substantial custom duty, and it just does not present a very favorable competitive picture with a local manufacturer.

Now, Mr. McConnell keeps referring to these thousands of patents. We submit that that is a red herring. What actually happens in practice? What happens is that a manufacturer decides that he wants to make a television set. He designs it. He generally submits the specifications of that to the patent owner. Hazeltine has received hundreds over the years. They say, "What patents do you have that apply to this set?" And that may be, usually, three or four or half a dozen. Those are patents that the manufacturer is burdened with investigating, a half a dozen, not the thousands.

49 The thousands are the devices which were too early or too late or went along at a different tack.

Again coming back to the question of positive versus negative modulation, Hazeltine was doing a great deal of research and development work at a time before these standards were fixed. It was not known which way they would go. Therefore, they did work on both types of circuits and both types of systems. As soon as the United States adopted negative modulation, all the patents on positive modulations went out the window. Nobody takes any time in this country investigating those patents. Everybody knows that they are valueless, they have been obsolete by the different standards.

So this question of the thousands of patents is just a red herring. It has no real significance whatever.

Now, in the Canadian situation, I think is the clearest of all, because there the Canadian law is very explicit that if a patent owner licenses importation of a patented
50 item he suffers very severe penalties. He may either be subject to a compulsory license granted by the court or even revocation of his patent. That is a risk which most patent owners do not want to take. And, as you can see, again you may say, "No, we don't like that way of doing business," but the Canadian law is to foster Canadian business, and they have many facets of Canadian law favoring Canadian business and to prevent aggrandizement of their market by their big neighbor to the south. We say that may be we don't like it, but that is the law in Canada and there isn't anything that we can do to fixit.

51 Now, coming to Australia, Mr. McConnell says that the license granted by the Australian pool expressly prohibits importation. But one thing that he did not tell your Honor is that he is talking about an 18 year old license. That hasn't been the practice in Australia since 1946, and the record will show that.

And, again, coming as a practical matter, your Honor, coming back to Canada; he has painted a horrendous picture. But what is the difference, as a practical matter, if Zenith ships a television set into Canada which infringes a Hazeltine Canadian patent? As a practical matter, what is the difference whether Hazeltine is the plaintiff in an infringement suit or whether if its exclusive licensee is the plaintiff? The obligations and the liability are just exactly the same, no matter who is the party plaintiff in that action.

Coming to the domestic situation, I think the proofs will

show what we categorically deny, and that is that Hazeltine ever offered Zenith an exclusive package license.

The Court: You mean in 1959?

Mr. Dodds: In 1959, yes, your Honor.

52 The Court: Prior to that you did?

Mr. Dodds: May I explain that, your Honor? It is true, prior to '59 there was no license issued other than a package license, but the fact is also—

The Court: To anybody?

Mr. Dodds: To anybody.

The fact is also true, your Honor, that nobody either asked for one or wanted one. The general practice has been for many years that in this country RCA and Hazeltine were the two principal research development and licensing organizations. If a manufacturer took one of these licenses from RCA and from Hazeltine they got complete freedom of design. They solved the patent problems, patent worries. They didn't have to worry what patents RCA might get next week or what patent Hazeltine might get next month. They had, you might say, complete freedom of the design, and that is what they wanted.

It is strange, all that has been said about this package licensing—I have been associated with Hazeltine for 34 years and until that time, until this time of the nego-

53 tiations with Zenith, and nobody ever asked for a package license. They didn't want one. That isn't what they wanted. They just didn't want it. But during that same time, by the same token, there was never any refusal of a license had anybody wanted one.

And, as a matter of fact, at that time it was Hazeltine that voluntarily worked out an arrangement, and that was worked out at the time of the expiration of a very basic Hazeltine patent which was sustained by this court and the Court of Appeals of this Circuit in litigation against ABCO. That patent covered a circuit, you might say, effectively without which you couldn't build a television re-

ceiver, a competitive one. When that patent expired Hazeltine voluntarily came to the conclusion that now is the time to offer people licenses under individual patents because we found that some manufacturers would use one patent and other manufacturers would use a different circuit and no one used all of them and, as a matter of fact, it was entirely possible not to use any of them if you wanted to.

If you wanted to have a design it would be perfectly
54 possible to have a television that didn't use any of these patents. Therefore, we voluntarily developed this program for licensing on individual patents and submitted to that. We not only offered it to companies which were not licensed, we offered the opportunity to those companies who had a package license to convert it to a license under individual patents if they chose to do so. Some did and some elected to continue under the package license, and that is the story about package licensing.

55 I would like to answer one question that you posed to Mr. McConnell, and that is the proposition that the acknowledgment of the validity of the United States patent in a license in the United States carries with it an acknowledgment of the validity of the corresponding foreign patent is utter nonsense.

In the first place, your Honor asked Mr. McConnell several times, "Were these patents the same?"

Well, the answer to that is yes and no. The patents were gathered on the same inventions, but the laws of these different countries as to what the scope of protection you get, and how broad or how narrow your patent is is quite different. The laws which determine who is the first inventor as between two or three people that some often make an invention with a great deal in common, that law is different in those countries. So while the patents are based on the same inventions, the patents are not the same in any sense of the word.

Thank you.

The Court: I have one more question, and maybe I shouldn't ask it of you because you say there wasn't
56 any package deal offered in 1959. My question, and perhaps it ought to go to Mr. McConnell, what was the basis, if there was a package deal offered in 1959, of the $200,000 maximum? Why was it that instead of one hundred or three hundred or fifty or four fifty? How was that arrived at?

Mr. Dodds: All right. That was arrived at this way: In the first place—I didn't mean to misstate myself—a package license was offered to Zenith in 1959 but the point was that it was not exclusively. We offered that or alternatively the individual type.

The Court: You offered them one for $200,000.

Mr. Dodds: That included black and white, color and everything, although I believe the record shows that at that time Zenith was not making color receivers at all.

The way the $200,000 was arrived at was actually, you might say, just some hard bargaining. We had started out offering a license on color patents without a ceiling.

One of the most powerful companies in the industry said,
"As a matter of policy we won't take a license with-
57 out a ceiling. You are going to have to sue us. We have never taken a license without a ceiling and we won't take one now."

And by some hard bargaining we arrived at a ceiling of $200,000. Now, on the theory that every licensee has to be treated the same, having put in a ceiling for that concern, we offered the same ceiling to everybody else.

The Court: Regardless of the fact that some other company might have half of the production as Zenith? They would still have to pay a $200,000—

Mr. Dodds: That is the maximum, your Honor.

The Court: I understand that.

Mr. Dodds: It would depend upon what their production was.

The Court: How do you arrive at the minimum?

Mr. Dodds: There is no minimum. The typical license is that you pay X per cent on your receivers up until a maximum and then you don't pay royalties any more.

58 The Court: What is it that you pay X per cent on? That is what I—

Mr. Dodds: The television receiver.

Now, I might explain one other point. I think that Mr. McConnell said a great deal about it in his brief, about this question of payment of royalties on complete television receivers—

The Court: That use none of the inventions?

Mr. Dodds: That use none of the inventions.

59 Mr. Dodds: All right.

First of all, I have never encountered anybody who was willing to take a license and pay this royalty if they didn't use any of our inventions.

These licenses run—

The Court: Assume that half of their production use your invention and the other half of their production didn't.

Mr. Dodds: Then they pay on their production, and the reason for that is that the rate of royalty is effectively low to take that into account, because of the fact that if they pay on what uses and what doesn't use, there is a constant argument and disagreement as to whether circuit "A" does or does not use it, just as you have gone through an argument as to whether or not this Zenith circuit infringes their Loughren patent; so we have taken the position that the royalty base, the base on which royalties are computed is apparatus of the type licensed.

Now, that point has been attacked. It went up to the United States Supreme Court and, as a matter of

60 fact, the Department of Justice filed a brief amicus

curiae in that case, and the Supreme Court of the United States in the case of Automatic Radio—

The Court: Is that the case where they say if you enter into such a contract with your eyes open you are stuck with it. Is that the case?

Mr. Dodds: I don't think that anybody suggested that Zenith's eyes are not open, your Honor.

The Court: I understand that, but they said that one couldn't complain about a contract that they had voluntarily signed even though it didn't seem fair that they would have to pay a percentage on articles that didn't embrace the use of any patents.

Mr. Dodds: Well, your Honor, I think that is more Mr. McConnell's interpretation of the Supreme Court. I don't think the Supreme Court said just that. What they said was—

The Court: They probably said it much more eloquently than I am saying it.

Mr. Dodds: The Supreme Court said that any reasonable royalty base could be used. It could be so many dollars
61 a set or it could be how many sets you produced, it could be on any reasonable basis. And, as a matter of fact, in the Supreme Court—and I presented the case to the Supreme Court—there were quite a number of earlier decisions of other courts which had held exactly the same thing. As I say, the reason is that you can—

The Court: You can agree to do anything.

Mr. Dodds: Well, you can agree to do anything.

But the reason for it, I mean the reason which is advantageous to both parties, is because of the fact, as I say, that it avoids complex disagreements of constant arguments as to whether a set does or does not come within the patent.

Also, it very much simplifies accounting procedures. I might cite as an example, in the early days it was customary in licenses of this sort to have the royalties based only

on the chassis portion, excluding cabinet, tube and speaker, because the manufacturer said, "Why should I pay
62 royalties on the cabinet? We have no patent on a cabinet. Why should I pay royalties on a speaker? You have no patent on a speaker."

So what was done was that an investigation was made and it was found that at that time about fifty per cent of the cost of a total receiver was represented by these items which were deductible, cabinet, tube and speaker; so what Hazeltine did was say—this was at the suggestion of licensees—we cut the rate in half and pay on the whole thing and we come out with the same answer. And that is what we have in here, instead of paying say a five per cent royalty which is quite often a reasonable royalty on the basis of use, just on those sets which happen to use this circuit or that circuit, it is a very small percentage and paid across the board.

The Court: I would assume that each television or radio manufacturer has a certain number of models of radios and televisions, some of which use part of your patent
63 and some of which don't, and I would think it could be ascertainable which model—and I assume that they keep their books showing how many of each model they sell—I would assume that it could be ascertained how many sets they show with your patents in them and how many they sold of your patents in them.

Mr. Dodds: That is a way of doing it. And as I say, that used to be the sort of a license which Hazeltine had. But the practical matter is that the amount of time spent for administration both by the manufacturer and by the licensees investigating every model every time they make a change in the model, and the models change in television sets more frequently than automobiles, every time they make a change, determine whether or not that is taken with another patent or without a patent and getting an

agreement with the licensor, it just becomes a very serious administrative problem. And both the licensee and the licensor have found it more practical to say, "Well, we will take a smaller royalty and spread it across the board and get rid of all the arguments."

64 The Court: I think at this time we will take our — short morning recess and then we will start the evidence.

(Whereupon a short recess was had herein, after which the following further proceedings were had, to-wit:)

65 The Court: You may proceed.

Thereupon, the counter-claimant, to maintain the issues in its behalf, presented the following evidence, to-wit:

Mr. McConnell: May it please the Court, I want to open this case by reading certain portions of a deposition which was taken by me, and the witness was Mr. Laurence B. Dodds. He was a vice president of the Hazeltine Company. Under the applicable rules, the Federal Rules, we can use his deposition, portions of it, read into the record their admissions.

The Court: Admissions against interest?

Mr. McConnell: Yes, all right. Which corporation is he the vice president of? Both of them, or all three of them?

Mr. McConnell: Hazeltine Corporation.

Mr. Dodds: Hazeltine Corporation.

Mr. McConnell: If the Court will bear with me, there are a few preliminary questions which give the background.

The Court: I am aware of the trivia which exists in depositions.

66 Mr. McConnell: I am reading from Page 2, examination by myself:

"Q. State your full name, please.

"A. Laurence B. Dodds.

"Q. Where do you live, Mr. Dodds?

"A. Great Neck, New York.

"Q. What is your profession?

"A. I am a lawyer.

"Q. Have you any connection with the Hazeltine Corporation?

"A. Yes.

"Q. What is that connection?

"A. I am a vice president.

"Q. Where is that company located? Where are its offices?

"A. Its principal place of business is at Littleneck, New York.

"Q. Has it got a street address?

"A. 59-25 Littleneck Parkway, Littleneck 62.

"Q. In what state is that company incorporated?

"A. It is a corporation of Delaware.

"Q. Is there also a Hazeltine Research, Inc.?

67 "A. Yes.

"Q. Do you have any connection with that company?

"A. I am a director.

"Q. Where is that company incorporated?

"A. Illinois.

"Q. Where is its principal place of business?

"A. 5545 West Diversey, Chicago, Illinois.

"Q. What is the nature of its business?

"A. Its business is to conduct research and development in the radio and television fields, to hold patents resulting from that research work, and to administer licenses under such patents.

"Q. You said you were a director of that company. Are you also an officer of the company?

"A. No.

"Q. Are you an attorney for that company?

"A. Yes.

"Q. General counsel?

"A. No. I have no special title.

68 I am trial counsel in the instant litigation representing the plaintiff.

"Q. Is there a Hazeltine Electronics Co.?

"A. No.

"Q. Is there any third company?

"A. Yes.

"Q. What is the name of it?

"A. Hazeltine Research Corporation, a corporation of New York. The principal place of business is at Plainview, New York.

"Q. Does it have an address there?

"A. If it does, I do not know it.

"Q. What connection do you have with that company?

"A. None.

"Q. You are not a director?

"A. I said I had none.

"Q. You don't represent it legally? Are you a lawyer for it?

"A. I have on occasion. At the moment I am not representing it in any manner.

69 "Q. How long have you been a vice president of Hazeltine?

"A. Since 1939 with an interruption in 1944 or 1945.

"Q. Have you always been general counsel for that company?

"A. I have never had the title of general counsel for any Hazeltine Company.

"Q. But you have acted as attorney from time to time?

"A. Yes.

"Q. How long have you represented them as a lawyer?

"A. The first instance was as of about July 1, 1935.

"Q. Have you continually represented them ever since that time?

"A. Except for 1944 and 1945.

"Q. What are your duties as vice president of this company?

"A. At present my duties as vice president are rather general. I have no specific responsibilities.

70 "Q. When you say 'at present,' has there been a time in the past when you have had specific duties?

"A. Yes.

"Up until March of 1960, I was vice president of the Hazeltine Corporation in charge of all of their patent matters and had such other responsibilities as were assigned to me from time to time by the chief executive officer.

The Court: Yes.

"Q. Will you tell us who the chief executive officers have been during the time that you have been serving as vice president?

"A. I can tell you who they have been, but I cannot tell you the exact periods because my recollection for dates is not that good.

"When I joined the Hazeltine organization in 1934 the chief executive officer was Jack Binns whose title, I believe, at the time was vice president and treasurer. Subsequently the chief executive officer was William
71 A. MacDonald. After his death Webster H. Wilson was chief executive officer.

"At the present time Wilfred M. MacFarland is the present executive officer.

"Q. Where does Mr. MacFarland live?

"A. Bronxville, New York.

"Q. What is the business of the Hazeltine Corporation?

"A. The business of the Hazeltine Corporation is preponderately research development and manufacturing military electronic equipment.

"Q. Does it own patents which it licenses?

"A. It owns foreign patents. It owns no United States patents.

"Q. Does it have a subsidiary that owns patents which are licensed to domestic users?

"A. The plaintiff in this action, Hazeltine Research, Inc.

"Q. Does the Hazeltine Corporation own the stock of Hazeltine Research, Inc.?

"A. Yes. It owns it all.

72 "Q. Of the three Hazeltine Companies, the Hazeltine Corporation is the holding Corporation of the stock of the other two?

"A. It does hold all of the stock of the other two companies.

"Q. When did Hazeltine Corporation or its subsidiaries start the business of licensing the use of its patents?

"A. 1924.

"Q. Prior to that time what had been its business?

"A. It was organized in 1924 to acquire the patent rights of Professor Alan Hazeltine, and its initial business was the licensing of those patents.

"Q. Were the patents of Professor Hazeltine largely in the electronic field?

"A. They were entirely in the radio receiver field.

"Q. Did it also start licensing those patents in foreign countries as well as the United States?

73 "A. It started licensing the foreign counterparts of those patents in foreign countries.

"Q. In other words, the patents which it owns and the licenses in foreign countries all have counterparts in the United States; is that correct?

"A. I could not state that as a one hundred per cent correct statement.

"Q. Substantially, is that so?

"A. Substantially that is so.

"Q. Are you familiar with an organization known as Canadian Radio Patents Limited?

"A. Yes.

"Q. How long have you known of that organization?

"A. For a great many years. I don't know just when I learned of it.

"Q. Can you give us approximately the time that you first knew of it?

"A. Between 1930 and 1940.

"Q. Do you know what the business of that company was?

74 "A. Was or is?

"Q. Well, was and is. When you first knew about it, what was its business?

"A. To the best of my knowledge the business of that company had always been the licensing of Canadian patents in the electronics field which it either owned or under which it had the right to grant licensees.

"Q. Do you know who the members of that organization were when you first knew it and who they are now?

"A. I don't know the answer to either of those questions."

75 I am going to Page 9:

"Q. What companies do you recall were members of it? You say you may recall some of them.

"A. I do recall that at one time at least the Canadian General Electric Company and the Canadian Westinghouse Company were members. Whether they are not now I do not know.

"Q. Do you know whether the Canadian Northern Electric Company was a member?

"A. I don't know with assurance."

I am going to Page 10:

"Q. Do you know of any agreement which the Hazeltine Corporation had with the Philco Company whereby Philco was to be permitted to sublicense or issue licenses through the Canadian Radio Patents, Limited?

"A. I recall the Hazeltine Corporation did have an agreement with Philco, one of the Philco companies, relating to the Hazeltine Canadian patents. Without refreshing my recollection I do not recall the nature of the rights which were granted to that Philco company."

76 I identified Exhibit No. 1, which is introduced here in evidence. I don't have the corresponding number here.

I asked him:

"Q. Can you identify this document as the license agreement under which the Philco products was licensed under the Canadian patents of the Hazeltine Corporation?

"A. Yes."

Then on Page 12, I examined him on the document. I asked him:

"Q. I call your attention to this provision, and I am quoting from Page 2 of the document:

" '. . . provided Hazeltine secures an adequate return for the use of its patents and inventions and Philco secures complete patent protection under the patents of both Hazeltine and Canadian Radio Patents, Limited, by an exchange of Radio-free licensees between Philco and Canadian Radio Patents, Limited, under the Hazeltine Canadian patents and the patents owned

or controlled by Canadian Radio Patents, Limited,
77 respectively.'

"Did you know from that language or from any other source that it was contemplated that Philco was going to enter into an arrangement with Canadian Radio Patents, Limited?

"A. I do recall that one of the objects of the Philco was going to enter into an arrangement with Canadian Radio Patents, Limited?"

Turning to Page 14, I examined the witness on a memorandum, "under date of November 5, 1953, re CRPL, signed by H. K. Thompson with copies to H. M. Turner and R. H. Littlejohn."

"Q. I call your attention to this document which recites that the shareholders of Canadian Radio Patents, Limited, are Northern Electric Company, Limited; Canadian General Electric Company, Limited; Canadian Radio Manufacturing Corporation (Rogers); Canadian Westinghouse Company, Limited, and Canadian Marconi Company. There is a recitation that each of these shareholders owns 20 per cent of the issued capital stock.

"I hand you this document and ask you whether or not that refreshes your recollection as to who were the members of that pool.

"A. No. I have no recollection other than what I expressed before. I have never seen the document in question or any copy of it."

Mr. Dodds: Your Honor, I move to strike the preceding question and answer.

The Court: In view of the fact that it doesn't refresh your recollection, I assume that was the only purpose—

Mr. Dodds: I think there is implied—reading the question, it was obviously a leading question. I just want to make sure that wasn't cited for proof.

Mr. McConnell: We are going to introduce the document.

Mr. Dodds: I still move that it be stricken.

The Court: I mean, the question and the answer will be stricken. Something was read to you for the purpose, for the hope that it would refresh your recollection, and
79 you stated that it didn't. Therefore, any reference to it at this time will be disregarded by the Court.

Your motion to strike that question and answer is granted.

80 Mr. McConnell: Returning to page fifteen of the deposition:

"Q. Do you recall a time when your company, one of your companies, and I assume it was the Hazeltine Corporation, entered into a license agreement with Canadian Radio Patents Limited?

"A. Yes.

"Q. Did you at that time make any inquiry or take any steps to find out who were the members of this organization?

"A. I did not.

"Q. Did anybody in your organization?

"A. I do not know.

"Q. You didn't know at the time; is that right?

"A. I don't recall whether I knew or not. I say I don't recall having knowledge of that. I may have."

"Q. I show you a document which is marked Defendant Dodds Exhibit 3 for identification"—which is marked in evidence here as Defendant's Exhibit 118—"which purports to be a photostatic copy of a
81 license agreement under date of July, 1943, between the Hazeltine Corporation and Canadian Radio Patents Limited. I ask you to examine that. It was produced from the pool files. The original was produced from them. I ask you if you can identify that as the

license agreement which Hazeltine Corporation entered into with the pool?

"A. I could not identify this without comparing it with a copy from the Hazeltine files."

And then there was some colloquy about what was produced from the files. Going to page 18:

"Q. Do you know who drafted the agreement under date of July, 1943," which is this document which is marked here as Defendant's Exhibit Number 118, "between Hazeltine Corporation and the Canadian Radio Patents Limited?

"A. To the best of my recollection it was drafted by the Canadian Radio Patents Limited.

"Q. Did you examine it and read it was signed
82 by Hazeltine Corporation?

"A. I did.

"Q. I call your attention to Section 1 on page 3 of this document which has been marked for identification as Dodd's Exhibit 3:

> 'The Licensor hereby grants to the Licensee, for the term of this agreement, the exclusive and divisible license, with the right to license others, to make within the Dominion of Canada the licensed apparatus specified in Section 2 hereinafter, and to sell said apparatus made by Licensee or its sublicenses to others for the use specified in Section 2 hereinafter, and for resale for such uses. Said license to manufacture includes the right to make all or any of the separate parts and the right to have all or any of the separate parts made by others, but no licenses granted to sell parts separately except as a bonafide repair of used licensed apparatus of replacement of worn
> 83 out or defective parts of used licensed apparatus.'

Do you remember that provision in the license agreement?

"A. May I see it, please?

"Q. Here it is.

"A. I don't have any recollection independent of the document, and I cannot identify this document without comparison with the document from the Hazeltine files."

And I turn to page 20. I asked the witness:

"Q. I show you a document which is marked for identification as Defendant Dodds Exhibit 4, which purports to be a copy of a letter under date of April 6, 1943, addressed to J. C. MacFarlane, Secretary-Treasurer, Canadian Radio Patents Limited. Apparently the original of this was signed by you as vice-president of the Hazeltine Corporation. I ask you to examine that document and to state whether or not you wrote it and sent it through the mail to Mr. MacFarlane?

84 "A. I can identify this letter. I wrote the original of it addressed to Mr. McFarlane.

"Q. In this letter, the first paragraph, you say:

'This letter is to confirm the substance of discussions yesterday morning between yourself, Messrs. Lanoue and Fortheringham of Northern Electric, and Mr. Binns and the writer of Hazeltine Corporation relative to the proposed License Agreements from Hazeltine Corporation to Canadian Radio Patents Limited . . .'

Would you say after hearing that that you knew that at least Northern Electric was a member of the pool?

"A. Yes.

"Q. Had you had a discussion on April 5, 1943, between the gentlemen named in that first paragraph?

"A. I did have such a conference.

85 "Q. Did you have some discussion about whether or not Canadian Radio Patents Limited could bring litigation to enforce Hazeltine patents in the event they were infringed?

"A. I don't have any recollection now of this discussion twenty-five years ago other than what is in the documents themselves."

86 Turning to Page ..... I said:

"Q. I call your attention to Page 3 of the letter in which you say: 'It is understood that Canadian Radio Patents, Limited, shall have the right to bring litigation for the enforcement of the Hazeltine Corporation Canadian patents at its expense and for its benefit.'

"Does that refresh your recollection?

"A. No.

"Q. You have no recollection of the subject matter, I take it, other than what is contained in the letter, is that right?

"A. Except to what is contained in the letter and the license itself if and when a copy, which I can identify, is placed before me."

Turning to Page 23:

"Q. Did you ever see such a license"—going back to Page 22:

"Q. Had you seen at that time any of their license agreements which the pool was using to license manufacturers?

"A. I believe not.

87 "Q. They didn't furnish you a copy of what kind of license they were going to use?

"A. I don't recall. I believe not.

"Q. Did you ever see such a license?

"A. I believe I have."

Then I asked that the document be marked for identification Defendant Dodds' Exhibit 5, which is marked in evidence here as Defendant's Exhibit 123, which is a copy of a license agreement between Canadian Radio Patents, Limited, and blank licensee.

"Q. I ask you whether you can identify that as a document out of your files, and tell us, if you can, from what source you obtained it?

"A. I can identify this as an exhibit from the Hazeltine files. I have no recollection of when or how it was obtained.

"Q. Could you tell us whether or not it came from Canadian Radio Patents, Limited?

"A. I do not know what the source of this was.

"Q. Is there anybody in your organization that would have any information on this?

88 "A. I am reasonably sure there is not."

Turning to Page 24:

"Q. Do you know what file it was produced from?

"A. To the best of my belief there is a file entitled 'Canadian Radio Patents, Limited' and I believe that that came from that file.

"Q. I call your attention to Article II of this purported license. On Page 3, Section 1:

> ' "The licensor hereby grants to the Licensee, upon the terms and conditions hereafter set forth, a personal, indivisible, non-transferable and non-exclusive license, only for the Licensed apparatus hereinafter specified and defined, and only as follows:
>
> ' "(A) to manufactured licensed apparatus in Canada and to sell or lease Licensed apparatus so manufactured and
>
> ' "(B) to have Licensed apparatus manufac-

89 tured in Canada for the Licensee and to sell or

lease such Licensed apparatus so manufactured for the Licensee subject to the payment of royalties thereon by the Licensee as provided in Article III hereof. Such Licensed apparatus shall be deemed to be licensed under this Agreement at the time of sale or lease by the Licensee.'

"Did you know that the form of license being used by Canadian Radio Patents, Limited, was confined to the manufacture of licensed apparatus in Canada in the sale of such apparatus?

"A. I have known that the Canadian Radio Patents, Limited, in some instances refused to grant licenses under its patents with respect to certain apparatus imported into Canada. When I learned that first I do not recall.

"I might correct my previous statement by referring to Plaintiff's answer to defendant's interrogatories which indicates that the license agreement, Exhibit
90 5, was received from Canadian Radio Patents, Limited, June 6, 1960, approximately six months after the complaint in the instant action was filed.

"Q. You understood, did you not, that this was the form of license—and I am referring to Defendant's Dodds Exhibit 5—that was being used at that time by Canadian Radio Patents, Limited?

"A. I think I have to qualify that. I did not understand it was the form, but I understood it was a form that was being used.

"Q. Have you produced any other form that you had in your files?

"A. To the best of my knowledge there is no other form in the files of Hazeltine.

91 "Q. So far as you know, this is the only form you have ever seen of theirs?

"A. That is correct.

"Q. Do you recall a time when a different license agreement was used when they were permitted to import up to $100,000 worth of their products?

"A. I have no knowledge of any specific other form. Over the years I have had an understanding that other forms have been used which permitted certain importation. I do not have any knowledge of the details.

"Q. Where did you get your information from that there were other forms?

"A. From Canadian Radio Patents, Limited.

"Q. Did you get it by writing?

"A. I do not recall."

Then I turn to the bottom of Page 27. I am examining on a document which was marked in the deposition as Defendant Dodds Exhibit 6, which purportedly is a memorandum of agreement, "apparently a form between Ca-
92 nadian Radio Patents, Limited, and some unnamed licensee."

"Q. I call your attention to this language which is contained on Page 5 of the document under Paragraph 9:

> "'The Licensee shall not import or cause to be imported directly or indirectly, into the Dominion of Canada, radio receiving sets manufactured or sold under this license during any one calendar year having an invoice price (including freight and duty) in the aggregate or more than $100,000.'

"Were you familiar with that provision in the earlier license agreements?

"A. That license agreement is dated seven years before I joined the Hazeltine organization or had any familiarity with the radio industry. To the best of my knowledge I have never known of such a provision."

Mr. Dodds: A similar motion to strike, your Honor, for the same reason.

The Court: Well, I think this is pretty immaterial. It may stay there for what it is worth. It is worth nothing, I guess.

93

Mr. McConnell: Well, it is historical.

The Court: It gives some background. At one time, they could bring in $100,000 worth—

Mr. Dodds: Your Honor, I don't think that is true. This is a piece of paper which Mr. McConnell showed me. I have never seen it before; it was dated back to the 1920's. Nobody has identified it. We don't know whether anybody signed such an agreement.

Mr. McConnell: Well, we have a stipulation that all questions of authenticity are waived here.

Mr. Dodds: That isn't the point. The authenticity only says the document is what it purports to be.

The Court: Well, it is a document that was in Hazeltine's files?

Mr. Dodds: No. This was not in Hazeltine's files. This was a document which—

The Court: It was an unknown licensee?

Mr. Dodds: This was a blank form. It didn't come out of Hazeltine files. The earlier one did. This one did not.

94

The Court: Is there any possibility or intention, Mr. McConnell, to hook this up in some other fashion other than in this fashion?

Mr. McConnell: Definitely.

The Court: Then I will take under advisement your motion to strike, and make a note to renew it at the end of all of the evidence. If he doesn't hook it up, I am going to strike it.

Mr. McConnell: I am going to hook it up with proof of the over-all conspiracy. This comes out of the file of the pool.

The Court: I mean, who said so besides you?

Mr. McConnell: Well, we have a stipulation—

The Court: I don't know where it came from, based on—

Mr. McConnell: I know. We submitted all these documents to Mr. Dodds, and he has stipulated that they come from where we say they come.

Mr. Dodds: Not anything of the sort. We only stipulated, and the stipulation says that we stipulate to the
95 authenticity; that the document is what it purports to be without having to refer to the originals. Many documents are copies. They came from various sources. We stipulated the authenticity, meaning the document is what it purports to be, and that is all that was stipulated.

Mr. McConnell: Well, if you want a witness to testify that it came out of the files—

Mr. Dodds: The custody of the original, or what happened to it—htis is just stipulating the authenticity of it.

The Court: By the authenticity, do you mean—do you stipulate that this did come out of the files of the Canadian pool?

Mr. Dodds: No, no. We just stipulated that each of these documents are what they purport to be, because many of them are copies.

Mr. McConnell: We will connect it up. We will put a witness on to testify where they came from.

The Court: It is a distinction I am not quite able to grasp, but let's go on.

Mr. McConnell: I can't either. I can't either.

The Court: Let's go on.

96 Mr. McConnell: On page 29, I asked the witness—

"Q. I show you a document marked for identification as Defendant Dodds Exhibit 7 which purports to be a form of license agreement used by the Canadian Radio Patents Limited which is dated 1929. I ask you whether or not you have ever seen that form?

"A. I have no recollection of ever having seen that form. Perhaps I should qualify my testimony to this extent: I did inspect a large volume of files of Zenith Radio Corporation dealing with the foreign licenses. I had selected some documents which at the time I did not read. When I say I have no recollection, it will have to be the understanding that they might have been selected without my present recalling just which documents were selected."

Mr. Dodds: Your Honor, may we have a continuing motion of these documents which I never seen before?

The Court: Of course, nobody—all you have done in regard to this document is to say you have never seen
97 it before. And we have none of the contents of it in the record.

Is this being offered now?

Mr. McConnell: I am going to offer these, but if he says I have to put on proof where they came from, I have to put witnesses on.

Mr. Dodds: It is more than that, your Honor. I think he has to prove relevance. A printed piece of paper doesn't prove anything. There is no proof that anybody ever signed a license like that. It may have been something they had in their files that they might use. There isn't any indication that anybody ever used it, or signed it, or submitted it to anybody. It is a blank form.

The Court: At this point, I agree with you. At this point, the offer would be denied.

Now, I don't know what else he is going to come up with.

Mr. Dodds: That's my point.

The Court: I mean, make a note of this too, a motion to strike, except I don't know what you are striking at
98 this point. The only thing in the record at this point is that this is a document that you never saw before.

Mr. Dodds: That's right.

The Court: What is in it isn't in the record, so I haven't been biased by its contents. Certainly, I won't see its contents until he comes up with more proof about it than he has at this moment.

All right.

Mr. McConnell: Well, I would like to offer in evidence, at this time, the pre-trial stipulation which was signed by Mr. Dodds as counsel for the plaintiff.

The Court: Let's get to the point of the pre-trial stipulation as it has some bearing on these two documents, if there is such a thing.

Mr. McConnell: It has bearing on it, I believe. Number five of the stipulation on page 2—

The Court: Paragraph five?

Mr. McConnell: Paragraph five. It says:

"Any party desiring to introduce in evidence at trial
99 a document or copy thereof previously produced by either party during discovery proceedings herein, or produced by any party to either of certain actions entitled Radio Corporation of America versus Rauland Corporation and Zenith Radio Corporation, Number 48-C-1818, in this court, and Zenith Radio Corporation versus Radio Corporation of America, et al., Number 1098, in the District Court of Delaware, may do so without further authentication or proof that: (a) such document is genuine, (b) such document was kept in the regular course of business, (c) such document was prepared by the author (or authors) indicated thereon or about the date appearing on the fact thereof, and (d) in the case of correspondence or memoranda, that such document was sent by the addressor(s) and received by the addressee(s) on or about the date it bears; providing that all objections under the rules of evidence are reserved, and subject to correction if error

appears. Each party agrees to furnish the other
100 party, at least thirty days prior to trial, a list of such documents on which it intends to rely at the trial and the party having custody of such documents agrees to make them available to the other party for inspection."

We have given Mr. Dodds all of these documents prior to trial, and he has never indicated he wanted proof.

The Court: Do these refer to one of two lawsuits you refer to?

Mr. McConnell: Yes, they do, and they have been given to him and indicating this came from one of these lawsuits.

The Court: Under this stipulation, since it isn't correspondence and doesn't come under the qualifications that it is from whom, and to whom—it's supposed to be from and to—what does it come under?

Mr. McConnell: Well, the relevance of this is that this is a form of license agreement which I have been examining the witness on, which he later admits he has seen,
101 later on in the deposition, which shows how they conducted their business.

True, they are not bound by—at this time, it is, all subject to my connecting it up, their being in this conspiracy. If they are once in the conspiracy, then they are bound by whatever any of the conspirators did in the course of the conspiracy.

102 The Court: What you are complaining about at the present time is, there is no minimum importation. I mean, this tends to indicate that at one time they were more liberal on the importation than they are at the present time.

Mr. McConnell: That's right. It is just historical. That is all. It just shows how it developed.

Mr. Dodds: But, your Honor, I still say the basic thing, even assuming that we admit that there was in existence

such a document, and it is an authenticated document, it doesn't show—there is still no showing of any relevance in the sense that there is no showing that anybody ever used this document. It is a blank form. It wasn't a copy of a license which CRPL granted to Joe Doaks. It is just a blank form. There is no indication anybody used that form.

Mr. McConnell: When I get to offering it—

The Court: I mean, just keep a memo on it. At this time, surely, Mr. Dodds, it is not admissible. He keeps
103 saying that pretty soon you are going to admit something about it, so we will wait and see if you do.

All right.

Mr. McConnell: Turning to Page 31:

"Q. I call your attention to Article II on Page 3 of this document, Section 1, under the designation 'Licensee':

"'Upon the terms and conditions herein set forth'"—

The Court: This is the same document?

Mr. McConnell: Yes, the same document?

"'Upon the terms and conditions herein set forth and solely and only to the extent and for the uses hereinafter specified and defined, the Licensor hereby grants and agrees to grant to the Licensee for the term of this agreement under all of the letters patent of the Dominion of Canada set forth in Schedules A and B attached hereto relating or applicable to or useful in the manufacture of radio receiving sets, a personal, indivisible, nontransferable and nonexclusive license to manufacture radio
104 receiving sets as herein defined at its factories within Canada, and not elsewhere without previous written permission obtained from the Li-

censor and to sell only in the Dominion of Canada radio receiving sets so manufactured by the Licessee, . . .'

"Do you recall ever having seen that provision anywhere?

"A. I am reasonably certain that I never saw that provision.

"Q. You never heard of it?

"A. Never heard of it.

"Q. You never heard that the Canadian Radio Patents, Limited, only licensed licensees who manufactured in Canada?

"A. That's a different question. I didn't say that. I think I answered that question some time before mainly to the effect that I did understand and have known that in certain cases they did grant licenses with respect to imported receivers of certain classes."

Turning to Page 35:

"Q. When did you first find out that your patents
105 were being licensed under a standard license agreement by Canadian Radio Patents, Limited?

"A. I believe the first positive information we had was upon the receipt of the license from defendant Dodds Exhibit 5 for identification.

"Q. You say you received that in 1960?

"A. Yes, sir.

"Q. Have you received royalties under that agreement since 1960?

"A. Under what agreement, Mr. McConnell? We don't receive any royalties under this license agreement, Defendant Dodds Exhibit 5 for identification.

"Q. You are right. Wait a minute, and we will start all over again.

"Under your agreement with Canadian Radio Pat-

ents, Limited, you do receive royalties for the use of your patents, do you not?

"A. Yes.

"Q. You are familiar that Canadian Radio Patents,
106 Limited collects moneys out of which they pay you royalties from sublicenses which they make; is that correct?

"A. Yes.

"Q. After you had knowledge in 1960 of the terms of the general license agreement or standard license agreement which they used, your company did receive royalty payments from Canadian Radio Patents, Limited, did it not?

"A. Yes.

"Q. And kept those payments?

"A. Yes."

Then I asked a question:

"Q. I show you a document which has been marked for identification as Defendant Dodds Exhibit 10. This document purports to be a letter on the letterhead of Noblitt-Sparks Industries of Columbus, Indiana, dated December 19, 1939, addressed to the Hazeltine Corporation. I ask you whether or not you have ever seen that document before?

"A. I have seen this document before.

"Q. Did you see it about the time it was received
107 by The Hazeltine Company?

"A. I saw it on December 22, 1929."

Mr. Dodds: That must be mistaken, Mr. McConnell.

The Court: '39 probably. The document is dated '39, isn't it?

Mr. McConnell: (Reading)

"I saw it on December 22"—I'm sorry—"1939."

The Court: All right.

108 Then I asked him:

"Q. I show you a document which was marked for identification as Defendant Dodds Exhibit 11. This document purports to be a letter from the Hazeltine corporation apparently by Mr. Binns to Mr. T. Earl Robinson, Noblitt-Sparks Industries, Columbus, Indiana, under date of January 5, 1940. I ask you if you ever saw that document before.

"A. I believe that I have seen this before. The first time I saw it was on the instance of reviewing the documents which were representative as selected from the Hazeltine files during the course of this litigation.

"Q. You had nothing to do with drafting this reply; is that right?

"A. I have no recollection of having anything to do with drafting the reply.

"Q. There is reference made here as follows:

" 'Insofar as Canada is concerned, I wish to point out that some few years ago Canadian Radio Patents,
109 Limited, of 159 Bay Street, Toronto, Canada, sued an alleged infringer under certain Canadian letters patent. This litigation continued over a period of years and finally was decided by the Privy Council in London.'

"Do you know anything about that litigation?

"A. No."

Turning to Page 40:

"Q. When did you first acquire any information about the patent situation involving, let us make it, importing of sets into Canada, so far as the patent situation was concerned in Canada?

"A. I believe that the first time I had any information on that subject was on or about the time of the granting of a license to Philco Products, Limited, and

at that time I believe my knowledge was confined to the patent situation of Canadian Radio Patents, Limited, and The Hazeltine Corporation.

"Q. That was 1938. What information did you have at that time?

"A. In 1938?

110 "Q. Yes.

"A. I knew at that time that Hazeltine Corporation owned a large number of Canadian patents. I was informed and believed that Canadian Radio Patents, Limited, either owned or had the rights to grants, licenses, under a large number of Canadian patents. I believe that was the extent of my knowledge at that time."

Turning to Page 43:

"Q. Did you ever find out from any source that Canadian Radio Patents, Limited, were issuing licenses to their licensees which included the Hazelfine patents?

"A. Did I ever?

"Q. Yes.

"A. Yes.

"Q. When did you find that out?

"A. Some time after 1943.

"Q. But you did not know it prior to the license agreement between Canadian Radio Patents, Limited, and the Hazeltine Company?

"A. I have no recollection of any such knowledge. In fact, my recollection is to the contrary."

111 And then I skipped a couple of questions, and on the same page, 44:

"Q. Does your company have records which would show whether or not they did receive royalties and from what source from the Canadian patents?

"A. I would expect that there would be records

which would show royalties received from the Philco Corporation pursuant to the agreement Defendant Dodds Exhibit 1 for identification.

"Q. Who would have those?

"A. The Officer responsible would be Mr. B. J. Tiffany, who is treasurer of the Hazeltine Corporation."

112 Turning to page 51, I was referring to a letter which Mr. Binns had written, and I asked the witness:

"Q. What did he have to do with the situation in Europe so far as patents were concerned?

"A. When? As of 1940?

"Q. You said he had been engaged for sixteen years.

"A. 1924 to 1940 was sixteen years. As of the date of this letter Mr. Binns had made several trips to Europe and had conducted a number of negotiations with respect to foreign licenses and he had also made a number of trips to Canada.

"Q. Did Mr. Binns conduct the negotiations which led to Hazeltine putting its patents in the Canadian Radio Patents Limited?

"A. Mr. Binns conducted negotiations which led to the Canadian Radio Patents Limited agreement which is Defendant Dodds Exhibit 3 for identification.

"Q. Did you have anything to do with that negotiation?

113 "A. Yes.

"Q. What did you have to do with it?

"A. I observed and advised Mr. Binns when requested to do so.

"Q. Did you go up to Canada and talk to anybody about it?

"A. It is my recollection that the negotiations were all conducted in New York.

"Q. Do you recall whom the negotiations were with?

"A. They were principally with Mr. J. C. MacFarlane.

"Q. Did you sit in on all of the negotiations?

"A. That I do not know.

"Q. Was there any discussion by Mr. MacFarlane of what use he was going to make of the Hazeltine patents if they were included in the Canadian Radio Patents Limited pool?

"A. My recollection is that Mr. MacFarlane advised that they would be added to the general collection of patents under which the pool had rights to grant li-
114 censes."

Turning to page 54:

"Q. Before I leave that subject, you don't know what investigation Mr. Binns made of what Canadian Radio Patents Limited was doing?

"A. I have no idea what investigation he made.

"Q. You don't know what knowledge he had?

"A. I don't know what knowedge he had as of 1940.

"Q. They entered into the arrangement with Canadian Radio Patents Limited in 1943?

"A. That is right.

"Q. Was it 1943 that you were having these negotiations?

"A. Yes.

"Q. Forgetting about what you knew in 1940, what did you know about this in 1943?

"A. I knew the same in 1943 as I knew in 1940.

"Q. Nothing?

"A. Nothing."

115 Page 55:

"Q. Did anybody from Canadian Radio Patents Limited ever discuss with you a contention that under

Canadian law it was impossible to license the import of American sets to be sold in Canada?

"A. I don't recall that anyone ever characterized it as being impossible. I recall discussions with representatives of Canadian Radio Patents Limited stating that there were some limitations on the right to grant licenses with respect to apparatus imported into Canada.

"Q. When did you have these discussions?

"A. I don't have any recollection. I believe that there has been several over a period of years."

116 Page 60:

"Q. I show you a document which has been marked as Defendant Dodds Exhibit 15 which is a letter under date of March 13, 1940, addressed to Mr. W. M. Angle, Stromberg-Carlson Telephone Manufacturing Company from the Hazeltine Corporation, apparently signed by Mr. Binns. I ask you whether you have ever seen that document before.

"A. The answer is the same as the one to the previous question.

"Q. Here is the recitation:

"'At the present time our existing licensees in Canada are Northern Electric, Rogers-Majestic, Philco and Stromberg-Carlson.'

"You knew that Northern Electric and Rogers-Majestic were both members of this pool?

"A. I knew it at one time. I don't know whether I knew it as of the date that letter was written."

Then turning to 62. I am referring now to Defendant Dodds Exhibit 16, which is a copy of a letter dated
117 January 27, 1941, to A. S. Wells from the Hazeltine Corporation:

"Q. I show you a document which has been pro-

duced from the Hazeltine files, DXBUD 2571, which purports to be a letter to A. S. Wells of Wells-Gardner & Co., dated January 27, 1941, apparently signed on behalf of Hazeltine by Mr. Binns. I ask you whether or not you have seen that document, or a copy of it.

"A. I have no recollection of having seen this document prior to the review of the documents selected by defendant's representative in this case.

"Q. In this letter to Mr. Wells your Mr. Binns says:

" 'The only sure way of securing complete protection from suit in foreign countries is to manufacture the patented apparatus under license in that country. This is particularly true since the right to manufacture is one of the three specific rights conveyed by a patent license in all countries.'

118 "Did Mr. Binns get that information from you?

"A. I have no present recollection.

"Q. Then he goes on to say:

" 'Unless you actually manufacture in countries where adversely held patents are in existence, the threat of those patents is just as much a risk to your business as are tariff regulations, currency restrictions, freight rates, insurance, and the many other impedimenta to the flow of trade.'

"Did he get that information from you?

"A. I have no present recollection."

Turning to Page 64:

"Q. I show you a document which has been produced from the Hazeltine files DXBUD 1859, which is marked for identification as Defendant Dodds Exhibit 17, which purports to be a letter from the Hazeltine Corporation by its president, apparently Mr. Binns, to Mr. A. J. R. Lanoe, Northern Electric Company in

Canada. I ask you whether or not you ever saw that document.

119 A. I have no recollection of ever having seen this document prior to the review previously referred to. I believe I was familiar with the circumstances to which it relates.

"Q. Were you familiar with the discussions which were being had with Mr. Lanoue in the latter part of the year 1942? To refresh your recollection, this letter states:

"'In connection with our discussions during the latter part of last year, this is to advise you that Philco Products, Limited, have not exercised the option to renew their agreement with us in Canada.'

"A. It is my recollection that I was familiar with those discussions but did not participate in them.

"Q. Do you know where they were held?

"A. I do not.

"Q. Who was Mr. Lanoue?

"A. Mr. Lanoue was Mr. MacFarlane's assistant and at the time I believe Mr. MacFarlane was seriously

120 ill and Mr. Lanoue was substituting for Mr. MacFarlane.

"Q. He was his assistant in the pool?

"A. I don't know. He was, I believe, an employee of the Canadian General Electric Company. What his relation to CRPL was, I do not know.

"Q. He's addressed here at Northern Electric.

"A. I am mistaken, I thought it was the Canadian National General Electric.

121 "Q. They were a member of the pool, were they not?

"A. I believe they were.

"Q. Now, your Mr. Binns says:

"'Under the circumstances, the agreement is no

longer in effect. Representatives of the Philco Corporation, however, have asked us to discuss the basis of a new agreement in which they desire to modify some of the terms of the old agreement to meet their conditions. It is our opinion that we are now in a position to discuss with you or with Canadian Radio Patents Limited, the possibility of entering into an agreement with that company in Canada. I would be very glad to get your reactions to this and if you desire to have a preliminary conversation on the matter with us, I will be glad to arrange a mutually convenient time and place.'

"Did you discuss with Mr. Binns the advisability of
122 entering into a license agreement with Canadian Radio Patents Limited?

"A. I have no recollection of any specific discussions.

"Q. Did you know of any discussion that arose as a result of this letter of February 6, 1943?

"A. There were some discussions that followed that letter. Whether they were as a result of the letter I do not know. There were discussions with Mr. MacFarlane.

"Q. Were you present?

"A. As I previously testified, I was present at some of the discussions. I do not know that I was present at all of them.

"Q. What generally were the discussions about?

"A. About a proposed agreement between Hazeltine Corporation and CRPL.

"Q. Did you discuss terms that you were to receive?

123 "A. Certainly we discussed terms. Those terms are the ones which we memorialized in the agreement which is Defendant Dodds Exhibit 3 for identification.

"Q. Did you discuss at that time with Mr. MacFar-

lane the source of the revenue of Canadian Radio Patents Limited?

"A. I have no recollection of such discussion.

"Q. Did you know anything about where they got what money they had?

"A. I had a general knowledge. I didn't have a specific knowledge.

"Q. What was your general knowledge?

"A. My general knowledge was that they licensed the patents under which they had a right to grant licenses on the royalty basis and collected those royalties.

"Q. That was their entire business?

"A. That I didn't know.

"Q. You knew that they were not manufacturing anything?

"A. That is right.

"Q. You knew that they were not importing anything?

124 "A. I believe I knew that, but there were also other patent activities."

The Court: Well, maybe this is a good time for our noon break, Mr. McConnell. It is 12:30.

Mr. McConnell: All right.

The Court: We will recess until 2:00 o'clock.

(Thereupon, Court recessed until 2:00 o'clock p.m.)

125 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

Before Honorable Richard B. Austin on Monday, February 17, 1964 at 2:00 o'clock P. M.

Appearances:

Mr. Dodds, Mr. Diggins, Mr. Ruestow,
Mr. McConnell, Mr. Curtis, Mr. Crotty.

Trial resumed pursuant to recess.

126 The Court: You may proceed, Mr. McConnell.

Mr. McConnell: Thank you, your Honor.

Starting with page 86 of the deposition of Mr. Dodds, I asked that an exhibit be marked as Dodds Exhibit 26,

"which is produced from your files under the designated DXBUD 2184, this letter being under date of March 29, 1955, addressed to George A. Schnell, Esquire. Apparently, this is written by you. I ask you whether or not you wrote and sent this document?

"A. Yes. I wrote that letter.

"Q. What was the occasion of checking on the circuits of the Motorola receivers?

"A. I have no specific recollection as to this particular checking on the Motorola receivers.

"Q. I call your attention to the recital here of U. S. Patent 2,547,648 with a Canadian counter-part of 487,448. The U. S. Patent is the one that is in suit in the instant lawsuit, is it not?

"A. That is right.

127 "Q. And the Canadian patent is its counter-part?

"A. That is right.

"Q. I show you a copy of a letter marked Defendant Dodds Exhibit 27 for identification from Mr. Hult-

man in Stockholm, Sweden, signed apparently by Mr. Binns with a copy to you. I ask you whether or not you got the copy that is referred to in that letter?

"A. I have no recollection independent of the document. I will take the responsibility for having received a copy of the letter.

"Q. Do you recall what this was with reference to?

"A. I don't have any recollection independent of the letter itself.

"Q. I call your attention to this paragraph in the letter:

"'The situation in Canada is quite different from that expressed in your letter in these rather important
128 particulars. We are not a member of Canadian Radio Patents Limited, the membership of which is comprised of a half dozen or so of the leading Canadian manufacturers. Consequently, we have no control and very little influence on their policies. The actual fact is that we have granted them an exclusive license with the right to sublicense in Canada under the patents owned by us in that country.'

"Is that a true statement?

"A. What you said comprised quite a number of statements. Some of them are true and some of them are statements of which I don't have knowledge.

"Q. Let us take them one at a time:

"'Consquently, we have no control and very little influence on their policies.'

"Is that correct?

"A. To the best of my knowledge, that is correct.

129 "Q. Then the next statement:

"'The actual fact is that we hae granted them an exclusive license with the right to sublicense in Canada under the patents owned by us in that country.'

"It that correct?

"A. I would not like to accept that paraphrase. I would rather rely on the agreement itself which is here offered as Defendant Dodds Exhibit 3 for identification.

"Q. Did you have anything to do with the preparation of this letter?

"A. May I see it, please?

"Q. Sure.

"A. Not that I recall.

"Q. Do you know who Mr. Hultman is?

"A. Yes.

"Q. Who is he?

"A. He is the patent attorney for Svenska Aktiebolaget Gasaccumulator.

"Q. Did you meet him over in Sweden?

"A. No.

130 "Q. Did you ever know him?

"A. Yes.

"Q. He was the man that was running the pool over in Scandinavia, wasn't he? Wasn't there a Scandinavian Patent pool?

"A. Not that I know of.

"Q. Do you know of an organization called AGA?

"A. The company I just named is properly referred to as AGA.

"Q. That is a patent pool, is it not?

"A. AGA is one of the larger electrical manufacturers in Sweden, to the best of my knowledge.

"Q. Weren't they running the patent pool?

"A. I don't know what you mean by 'the patent pool.' At various times there were patent pools in various countries. I don't know of anything that could be characterized as the patent pool."

131 Now we go to the bottom of Page 106 of the deposition:

"Q. You did know, did you not, that there was an effort on the part of Canadian Radio Patents, Limited, to stop the importation of any American sets into Canada?

"A. I stated that before, that I do know that that was, in general, their policy with certain exceptions.

"Q. Do you recall any particular specific exception?

"A. No, not with certainty. I have a recollection that they licensed the importation of FM tuners, but I am not certain as to that.

"Q. Do you know of any instances where they licensed the importation of complete sets of radio or television?

"A. I do not know."

On Page 108, starting at the bottom of 107:

"Q. In this letter there is the following statement by Mr. Brownlee:

132 " 'Our vice president, Mr. E. M. Coles of Canadian Westinghouse has taken over Mr. MacFarlane's CRPL work for the time being, and after getting things straightened out with RCA he and I held a meeting with Admiral two weeks ago. Mr. Siragussa was supposed to attend, but sent one of his American vice presidents instead and we offered a proposal for settlement which included both a reduced and simplified royalty rate and a substantial reduction after sales exceed five million dollars in any one year. We realized the weakness of allowing very much for accepting or refusing the proposal, but finally gave to the end of July on the basis that Mr. Siragussa was not available to make the final decision.'

"The first question I wanted to ask you is this: Did you know at that time that Canadian Westinghouse was a member of the pool?

"A. I have testified before that Canadian Westinghouse was a member of the pool.

133 Q. I thought you had said Canadian General Electric.

"A. And Canadian Westinghouse, too."

134 Going to page 110:

"Q. Did you ever make any investigation of whether or not this pool up there in which your patents were being licensed was violating the American anti-trust laws?

"A. I would be very surprised if I ever attempted even such an investigation because I don't see how a Canadian company could violate the American anti-trust laws.

"Q. I didn't ask you that. I asked you if you made an investigation and you tell me no.

"A. That is right.

"Q. Did you know that the United States Government had sued RCA for being in that pool?

"A. I did.

"Q. When did you first learn about that?

"A. It was several years ago. My memory for time is not too good.

"Q. Apparently you were greatly surpised at that suit.

135 "A. No.

"Q. You were not?

"A. No.

"Q. Did you know that Zenith Radio had sued RCA and General Electric for being in that pool?

"A. I knew there was litigation between General Electric and RCA. The only litigation which I was familiar with—wait a minute. I knew there was litigation between Zenith and RCA and General Electric and Westinghouse. I do not recall that I ever had any

knowledge of the date of the details of all of the issues in that litigation.

"Q. I didn't ask you whether you knew anything about the details or not. I wanted to know whether you knew that Zenith had sued General Electric and RCA for being in that pool?

"A. I don't have any such specific recollection.

"Q. You never found out that that lawsuit involved the Canadian pool?

136 "A. No. I didn't say that.

"Q. When did you find that out?

"A. I could not pinpoint—my recollection is that the suit filed by Zenith against RCA was filed either at the end of 1945 or 1946 which is some fifteen, sixteen, or seventeen years ago and sometime in that intervening period I found out various issues involved in that case. When I first learned that participation in the Canadian patents pools was involved I don't recall.

"Q. When you did find it out, whether you recall the date or not, did you look into it to find out whether or not you might be liable for being in the pool?

"A. I am not quite sure how to answer it. I have been aware, of course, for a great many years, of this attack upon American companies who directly or indirectly participated in the Canadian Radio Patents Limited. I have tried to keep myself informed both of any litigation involving that subject matter, or any proceedings in this country or abroad, and when I 137 acquired any particular bit of information I just do not recall. That's a long period of time.

"Q. You knew something was going on in the way of an attack by American companies against that pool, didn't you?

"A. Yes.

"Q. You know that for a long time.

"A. Yes.

"Q. You still stayed in the Pool?

"A. Most definitely, and we intend to continue to stay in the pool."

138 Page 114 of the deposition:

"Q. Have you read the consent decree entered in the Government's suit against RCA involving the Canadian Radio Patents, Limited pool?

"A. I said before I have read a consent decree in an antitrust action by the Government against RCA. I have also said that I do not recall that any provision of that required RCA to get out of the Canadian Radio Patents pool. I didn't say it was not a fact. I said I did not recall it."

Page 115:

"Q. How long does your contract with the Canadian Radio Patents, Limited last?

"A. It expires some time in 1963.

"Q. Have you had any negotiations to renew it?

"A. Not that I have any knowledge of.

"Q. Who is in charge of the renewal of that in the event that it is going to be renewed?

139 "A. Mr. Ruestow.

"Q. You have never participated in any discussion at any time with anybody of Canadian Patents, Limited, as to whether this contract is to be renewed?

"A. That is correct.

"Q. After you had executed your exclusive license to CRPL which I think you said was in 1953 running to some time in 1963, you had no right to license anybody else in Canada, did you?

"A. I don't remember so testifying and I don't remember that the agreement ran from 1943 to 1963. It ran for ten years with an option on the part of CRPL to renew for another ten years.

"Q. It ran to when?

"A. To 1953.

"Q. And they had the option to renew?

"A. Right.

"Q. And you are going to quibble with me as to whether or not they exercised their option?

"A. I want to make the record clear. That's all.

140 "Q. They have had a contract from 1943 to 1963, have they not?

"A. They have, yes.

"Q. During that time you have not been free to license your patents in Canada or anywhere else, have you?

"A. Canada or anywhere else."

Mr. Dodds: Excuse me, that is "Canada or anywhere else?" with a question mark.

The Court: Well it is in there twice. At which time is the question mark? It is in the question and it is also in the answer.

Mr. Dodds: The witness answered "Canada or anywhere else?" question mark.

Mr. McConnell: There is a question mark here. I don't know what it means. You answered the question: "Canada or anywhere else." Who put the question mark in—I assume it was the court reporter.

The Court: I assume that the court reporter did. Why, I don't know.

Mr. McConnell: I don't either.

The Court: It would have been a good place for it before the last one, but I don't know why it is there. That is where I assumed it was. All right, it must have been

141 Mr. Dodds' inflection.

Mr. McConnell: Page 118:

"Q. Did you, from 1943 down to 1963 ever execute any other license for the manufacture, importation or sale of radio or television in Canada except the one with CRPL?

"A. No.

142 Then I say:

"All right, we will now pass on to England."

And then I had a document marked. It was dated November 18, 1958, to Mr. Binns, J. Binns from L. B. Dodds and was marked Defendant Dodds Exhibit 33 for identification:

"Q. I show you a document which is produced from your file DXBUD 351A, B and C, which purports to be a copy of the Hazeltine-GEC agreement under date of November 18, 1938 which has been marked for identification as Defendant Dodds Exhibit 33.

"I ask you whether or not you have seen the original of that document?

"A. Yes.

"Q. Did you sign the original of that document?

"A. I believe I did.

"Q. Did you prepare it?

"A. I did."

Have we got the counterpart number on that? That is Dodds Exhibit 33?

143 Mr. Curtis: 43.

Mr. McConnell: It is marked in evidence here as Exhibit 43.

Could I have that document? Have you got it?

This document is by stipulation in evidence. It is a Hazeltine document produced from the Hazeltine file and it purports to be and is an agreement between Hazeltine, Hazeltine Corporation and GEC, that is General Electric Company, Limited, incorporated in England.

It grants:

"It is hereby mutually agreed between the parties as follows: For the consideration hereinafter mentioned, the corporation hereby grants and to the company the right to utilize the Hazeltine patents hereinbefore referred to for the purpose of securing entry as a licensor into any British wireless broadcast pool which may be formed on such terms as the company may deem proper, or otherwise to deal with the said
144 patents by way of granting sublicenses thereunder, and generally to utilize such rights for the purpose of consolidating the position of the company in the radio industry in carrying on business on radio and television."

The Court: This is dated when, Mr. McConnell?

Mr. McConnell: This is dated the 6th day of April, 1939.

The Court: All right.

Mr. McConnell: And that agreement remained in full force and still is in force with renewals up to now.

The Court: Do you accept that testimony, Mr. Dodds?

Mr. Dodds: Most definitely not, your Honor.

Mr. McConnell: I thought we had agreed on a few things, but apparently we haven't.

The Court: Well, I mean, I don't know whether this was based on a stipulation or just based on your unsworn testimony. That is what I was inquiring about.

145 Mr. McConnell: Well, I think anything that I say here, I will assure the court that I will offer not sworn testimony but documentary evidence which proves it conclusively.

The Court: I mean, there is nothing at this point to indicate that this 1939 document is still in effect as of today. That is the only point—

Mr. McConnell: I will have to connect it up.

Mr. Dodds: It even specifies on its face that it is effective for five years from 1939.

Mr. McConnell: I said with renewals.

The Court: All right, we will just pass that up, and I am sorry that I raised it.

Mr. McConnell: No, I am very happy to have your Honor raise it because it is possible that I could be in error in some of these things, but I don't think so.

I examined him on that document and asked him whether or not he had ever seen the original of that document and he said:

"A. Yes.

"Q. Did you sign the original of that document?

146 "A. I believe I did.

"Q. Did you prepare it?

"A. I did."

147 Then on page 124 I continue with the interrogation—bottom of page 123:

"Q. When did you first find out that there were pools over there in England?

"A. I don't have any recollection of when I first got that information.

"Q. Did you know a Mr. Topham?

"A. I met Mr. Topham once.

"Q. He was a manager of the radio pool in England, was he not?

"A. As of what date?

"Q. Well, for a long time. My first question will be: Did you know that he was the manager at any time?

"A. Yes.

"Q. What time did you know that he was the manager?

"A. In 1960. That is when I met him.

"Q. Did you know that he had been a manager

for many years prior to that time, apparently as far back as 1933, according to this letter?

"A. As of 1960 I knew he had been manager of
148 the successive British pools for quite a period of time. I don't believe I ever knew just how long.

"Q. Do you know how the Hazeltine patents got into the pool, the 'successive pools,' as you put it?

"A. I don't know anything about the A.4 pool. I believe the first contact that I had was with the A.6 pool and as to that pool the Hazeltine patent rights in Great Britain were given to the General Electric Company Limited for exploitation in Great Britain. That included the right to place those patents in the British Radio and Television pools."

And then I asked that a document be marked, an agreement between the Hazeltine Corporation and General Electric Company, dated 1945, and it was marked as Defendant Dodds Exhibit 35.

"Q. I show you a document which was produced from the Hazeltine files, DXBUD 1972, marked for identification as Defendant Dodds Exhibit 33, which
149 purports to be an agreement between the Hazeltine Corporation and General Electric Company Limited. I ask you if you can identify that document as being the copy of the contract of the Hazeltine Corporation?

"A. To the best of my knowledge this is a draft of a proposed agreement but not a copy of any actual agreement.

"Q. Could you identify the writing on this?

"A. The writing is that of the then office manager of the patent department.

"Q. Who was he?

"A. A Miss Coyle.

"Q. You say this document was never executed?

Was there a document executed on the same subject matter?

"A. Yes.

"Q. Did you have anything to do with negotiating this agreement or the agreement that was actually executed?

"A. No.

150 "Q. Where is the original of the document that was executed?

"A. Well, I think it is in the same place as these other agreements, apparently in the safe of Hazeltine."

At the bottom of Page 126:

"Q. This purports to have a date in 1945 and the first agreement we have apparently was executed in 1948, so we have a hiatus in here so we want to check the agreement.

"Let's go to the 1948 agreement.

"I ask the reporter to mark this as the next exhibit.

"Copy of an executed agreement made on the 10th day of November, 1948, between the Hazeltine Corporation and General Electric Company, Limited, was marked as Defendant Dodds Exhibit 36 for identification."

Now, have we got the counterpart of 36? Will you get it for me, please.

"Q. Referring to Defendant Dodds Exhibit 36 for identification, it bears the Hazeltine file number DBUD

151 1789. This purports to be a copy of an executed agreement made the 10th day of November, 1948, between Hazeltine Corporation and General Electric Company, Limited, signed for the Hazeltine Corporation by Jack Binns, president, and Laurence B. Dodds, vice president.

"I show you this document and ask you whether or not your signature appears on it and if it was executed by the Hazeltine Corporation?

"A. My signature does appear on it and it was executed by the Hazeltine Corporation.

"Q. There are a number of 'whereas' clauses in here which refer to earlier agreements, and I call your attention to this one:

" 'And Whereas a British Wireless Broadcast Pool was duly formed and the said rights were duly exercised by the Company and the said further Agreement was by agreements between the Corporation and the Company dated the 24th day of July one thousand
152 nine hundred and forty-five and the Twenty-fifth Day of June, One Thousand Nine Hundred and Forty-eight extended for additional periods of three years and one year respectively . . .'

"Is the contract referred to as being executed on the 24th day of July, 1945, the one of which we had the tentative draft here, which was identified as Defendant Dodds Exhibit 35?

"A. I have no independent recollection. I would have to check the actual document.

"Q. I call your attention to this provision:

" 'Now It Is Hereby Mutually Agreed between the Parties as follows:

" '1. For the consideration hereinafter mentioned the Corporation hereby grants unto the Company the right to utilize the Hazeltine patents hereinbefore referred to for the purpose of securing entry into the New Pool on such terms as the Company may deem proper or otherwise to deal with the said Patents by way of granting sublicenses thereunder for the purpose of
153 the New Pool,'

"Do you know what pool that was? Was it the A.6 pool?

"A. I believe that was the A.6 pool.

"Q. Do you recall that Hazeltine was to get half of the receipts of General Electric Company, Limited, from the pool?

"A. I have no recollection independent of the document.

"Q. Look at this document and tell us this: Was there another document which gave the terms which Hazeltine was to receive for the use of its patents in the pool?

"A. I believe there is no other document.

"Q. Where would we have to go to find out what Hazeltine was receiving for the use of its patents in the pool?

"A. I would suggest Defendant Dodds Exhibit 36 for identification.

"Q. It seems to me I finally got something right here. I call your attention to Paragraph 2. It states:

154 " '2. As consideration for the rights granted by the Corporation to the Company hereunder the Company shall pay to the Corporation Fifty Per Cent of all sums received by the Company from the New Pool by way of royalties upon the combined Patents of the Corporation and the Company in the said New Pool.'

"That's what they were getting?

"A. I prefer to let the document speak for itself.

"Q. You don't think I read the document correctly?

"A. I think you can read as correctly as I can.

"Q. Did you fellows get together and decide that you would not characterize any documents or testify to anything except the best evidence?"

And then there was some colloquy on that statement, which I don't need to go into, I guess.

155 Then I marked the next document Defendant Dodds Exhibit 37 for identification, which is marked in evidence here as Defendant's Exhibit 47.

"Q. Before going to this document let me ask you this:

"Did you ever advise your corporation, the Hazeltine Corporation, or any of the subsidiaries whether they should let the Hazeltine patents be put into this pool?

"A. I don't recall ever giving that specific advice. The Hazeltine patents through the British General Electric Company were included in the then current British pool before I ever joined the Hazeltine organization.

"Q. But they were not included in perpetuity, were they?

"A. That's right.

"Q. These agreements were renewed from time to time. At any time when they were renewed or when a new pool was formed, were you consulted as to whether or not an arrangement that you were entering into was

156 a legal arrangement?

"A. I don't believe the question was ever raised.

"Q. You didn't volunteer any information or any advice as to whether this pool might violate the anti-trust laws?

"A. I never gave any such express advice, to the best of my knowledge.

"Q. Nobody asked you and you were not concerned about it?

"A. I had my own opinion and I did not have any concern.

"Q. That is not quite what I had asked you.

"A. You asked me if I was concerned. I said I had no concern.

"Q. You had no concern about it at all and still don't?

"A. That is correct."

Turning to Page 134 of the deposition, I identified a document as Dodds Exhibit 39, which was an agreement executed on the 27th day of February, 1953, between Hazeltine Corporation and General Electric Company, Limited, and which is here in evidence by stipulation as Defendant's
157 Exhibit 48.

"Q. I show you a document which is marked for identification as Defendant Dodds Exhibit 39 which apparently has been produced as Exhibit G in answer to our interrogatories, which purports to be an executed agreement on the 27th day of February, 1953, between the Hazeltine Corporation and the General Electric Company referring to the A.7 pool. I ask you if that is a true copy of the original document which you and the other official of the Hazeltine Company signed?

"A. Yes, it is.

"Q. Under this your company was to get 40 per cent of the sums received by General Electric Company, Limited?

"A. I prefer to stand on the document itself.

"Q. If the document says that, would you accept the document?

"A. I will.

"Q. Those receipts were from the A.7 pool upon the combined patents of the corporations in the said pool
158 and GEC in the said pool.

"A. If that's what the document says, I stand by it.

"Q. You read it before you signed it, I take it?

"A. Yes.

"Q. Did you ever see the form of license which the pool was using?

"A. I have seen several forms of license which the pool has used from time to time. I do not recall whether I have seen the specific license under the A.7 pool."

Then on Page 136:

"Copy of memorandum by L. B. Dodds dated February 24, 1958, was marked as Defendant Dodds Exhibit 40 for identification.

"Q. I show you a document marked for identification as Defendant Dodds Exhibit 40 which is a memorandum by you under date of February 24, 1958, and I ask you whether or not you wrote that memorandum?

"A. I did.

159 "Q. You state here: 'The British pool agreement, in which GEC and Hazeltine participate, has been extended from December 31, 1957, to June 30, 1960.'

"Is that true?

"A. I stand on what the document says.

"Q. It is your document. Are the facts you state there true?

"A. The facts stated in that document are true, to the best of my knowledge.

"Q. Do you recall where you got that information?

"A. I don't recall that I got it from any single source. I got the information from agreements and correspondence and my own personal familiarity with the pool and with the agreements and arrangements with the General Electric Company, Limited.

160 "Q. Speaking of your familiarity with the pool, you knew that the pool refused to license the import of radio sets and television sets?

"A. My information is to the contrary.

"Q. What information do you have to the contrary?

"A. The documents themselves.

"Q. What documents?

"A. The pool agreement and the licenses granted by the pool.

"Q. Have you any of those documents in your possession?

"A. Not at the moment. I believe they have all been made available such as we had during the discovery process.

"I might say on the record that you have all of such documents of that character which we have because they were all in our files. None of them were in the safe because Hazeltine Corporation is not a party to any of those documents."

Then I identified a copy of an agreement dated 1939 between Electrical and Muslical Industries Limited, 161 Marconi's Wireless Telegraph Company Limited, the Mullard Radio Valve Company Limited, N. V. Philips' Gloilampenfabricken (hereinafter together called 'The Pool Parties') and the General Electric Company Limited. It was marked as Defendant Dodds Exhibit 21 for identification, and it is marked in evidence here as Defendant's Exhibit 51.

"Q. I ask you if you have the original of this document in your possession. By 'you,' I mean your company.

"A. We do not.

"Q. Where did you get that copy?

"A. I have no present recollection.

"Q. It recites at the top of that document who the pool parties are. Is that your recollection as to who the members of the British pool were?

"A. I don't have any recollection independent of

this document because as of 1939 I had no contact with the British licensing arrangement of the Hazeltine Corporation.

162 "Q. After you got interested in this matter of pools, whom did you understand were the members of the pool?

"A. I could not recall without referring to the pool documents. The membership of the pools changed from pool to pool and often, after a pool was formed, other companies were added.

"Q. What documents have you got in your possession which you could turn to that would tell you that?

"A. In Plaintiff's answer to Defendant's interrogatories at page 13 there are listed the various pool agreements and various licenses issued by the successive pools of which copies were available in the Hazeltine files and copies of all those documents were attached as Exhibit F through N inclusive."

That document is in evidence here as Defendant's Exhibit 52.

I turn to page 141:

"Mr. Dodds, calling your attention to Defendant Dodds Exhibit 40 for identification which is your mem-
163 orandum on the extension of the British Pool Agreement until June 30, 1960, could you tell us whether that pool was extended beyond that date?

"A. It is my recollection it was not.

"Q. There is no pool agreement at present ending in England?

"A. I believe there is.

"Q. What is the name of that pool?

"A. I believe it is called the A.8 Pool.

"Q. Could you tell us for what period of time the A.8 Pool was to run?

"A. It is my recollection that it was for four years.

"Q. That would be to June 30, 1964?

"A. That is my recollection. I am not too positive.

164 "Q. I show you a document which has been marked for identification as Defendant Dodds Exhibit 42 which was produced in answer to our interrogatories as Exhibit F. It purports to be an agreement of the pool members in Britain made under date of the 31st of August, 1948. I ask you if you have seen the original of that document?

"A. It is my recollection that I have not seen the original of that document.

"Q. Do you know from what source Hazeltine Company received it?

"A. I am reasonably certain it was received from the General Electric Company.

"Q. The General Electric Company was acting on behalf of Hazeltine in handling the Hazeltine patents in Great Britain, isn't that true?

"A. That is correct.

"Q. Do you know whether this document which pur-
165 ports to be a copy was executed by the signatory parties?

"A. I have no knowledge of that.

"Q. Can you tell us what pool this purports to be a copy of so far as the name is concerned? A. 6, A. 7, or A. 8?

"A. I believe that was related to the A. 6 pool.

"Q. Can you tell us whether or not the A. 6 pool actually took effect?

"A. It is my information that it did.

"Q. The Hazeltine Company through the General Electric Company Limited, received royalties through the use of their patent in that pool, did it not?

"A. The Hazeltine Corporation did not receive royalties. It received income through the General Electric Company which the General Electric Company derived from the pool.

"Q. I call your attention to Paragraph 7 of this document which is contained on Page 5 of Defendant Dodds Exhibit 42 for identification:

166 " '7. Unless otherwise agreed no licenses are hereby agreed to be granted to import Radio Apparatus into the United Kingdom or to deal in in the United Kingdom imported Radio Apparatus or Radio Apparatus containing imported component parts to an extent exceeding in value 10 per cent of the retail list price of such Radio Apparatus except in each case samples and experimental models for the use of the parties hereto.'

"Were you familiar with that language?

"A. Yes.

"Q. You knew that was the cause under which the A. 6 pool was being operated, did you not?

"A. Yes."

Then I marked for identification a copy of an agreement dated the 4th day of February, 1949, between various companies, marked as Defendant's Dodds Exhibit 43 for identification, and it is here received in evidence as Defendant's Exhibit 53 by virtue of our stipulation.

167 "Q. I show you a document which has been marked for identification as Defendant Dodds Exhibit 43 which is produced from the Hazeltine files under the number DXBUD 815. This purports to be an agreement under the 4th day of February, 1949, between various companies. I ask you if you have ever seen the original of that document?

"A. To the best of my knowledge I have not seen the original of which this is a copy.

"Q. Do you know from what source Hazeltine received this document, this copy?

"A. I believe it received it from the General Electric Company."

Then I marked for identification a copy of an agreement dated March 23, 1949, between various signatory companies, as Dodds Exhibit 44. It was received here in evidence as Defendant's Exhibit 54.

"Q. I show you a document which has been marked for identification as Defendant's Dodds Exhibit 44
168 which was produced from the Hazeltine Company files DXBUD 819, which purports to be an agreement of the 23rd of March, 1949, between various signatory companies. I ask you whether or not you have ever seen the original of that document?

"A. To the best of my knowledge I have never seen the original of this document.

"Q. Can you tell us the source of that copy?

"A. I believe it came from the General Electric Company."

169 Then I marked for identification an agreement dated June 16, 1949, between various signatory parties, marked Dodds Exhibit 45 for identification. I asked him whether or not he had ever seen the original of that document before. And he said:

"I believe that I have not seen the original of that document before.

"Q. Tell us from what source the Hazeltine Company received that document?

"A. I believe it was received from the General Electric Company.

"It is to be understood that each of the references to the General Electric Company refer to the General

Electric Company of Great Britain and not the United States General Electric Company.

"Q. That is the same General Electric Company which you told us a moment ago was acting on behalf of your company in handling its patent right in Great Britain?

"A. That is correct."

Then I marked for identification an agreement dated June 16, 1949, between various signatory parties, labelled
170 Exhibit J-1, marked as Defendant Dodds Exhibit 46, and they are here in evidence as Defendant's Exhibit 55.

"Q. I show you the document which is marked for identification as Defendant Dodds Exhibit 46. This purports to be an agreement made the 16th day of June, 1949, between various signatory parties and is produced as Exhibit J-1 in answer to our interrogatories. The names of the signatories are typed in. I ask you whether or not you have ever seen the original of that document?

"A. May I see the preceding Exhibit?

"Q. Here it is.

"A. I believe this document is a duplicate of Exhibit 45 and my answer with respect to Exhibit 45 applies thereto.

"Q. Your company received Defendant Dodds Exhibit 46 for identification from the General Electric Company of England?

171 "A. That is right."

Then I marked for identification an agreement under date of March 3, 1950 between various signatory parties as Defendant Dodds Exhibit 47, which is here in evidence under our stipulation as Defendant's Exhibit 56.

"Q. I show you a document marked for identifica-

tion as Defendant Dodds Exhibit 47 which purports to be a copy of an agreement under date of March 3, 1950, between various signatory parties. I ask you whether you have ever seen the original of that document?

"A. To the best of my knowledge I have not seen the original of that document.

"Q. Can you tell us from what source Hazeltine received that?

"A. General Electric Company."

I next marked an agreement dated March 8, 1950, between various signatory parties, as Defendant Dodds Exhibit 48, here in evidence as Defendant's Exhibit 57.

172 "Q. I show you a document marked for identification as Defendant Dodds Exhibit 48 which is produced from the files of Hazeltine Company under the designation DXBUD 832, purporting to be a copy of an agreement under date of March 8, 1950, between various signatory parties. I ask you whether or not you have ever seen the original of that document?

"A. To the best of my knowledge I have not seen the original of that document.

"Q. From what source did you receive this?

"A. From the General Electric Company."

173 Then I marked an agreement dated August 1, 1952, between various signatory parties. I marked it as Defendant Dodds Exhibit 49:

"Q. I show you a document which is produced from the files of the Hazeltine Company which has been marked here for identification as Defendant Dodds Exhibit 49 and which bears the identity of the Hazeltine File No. DXBUD 656. This purports to be an agreement made the first day of August, 1952, between various signatory parties. I ask you whether or not you have seen the original of that document?

"A. To the best of my knowledge I have not seen the original of that document.

"Q. Can you tell us from what source you received the copy?

"A. General Electric Company.

"Q. I notice there are a number of marginal notes on this document. Can you identify the handwriting of those notes?

"A. Some of the handwriting is mine and some is a secretary in the Hazeltine office.

"Q. Apparently those notes indicate that this document was compared by you with another document.
174 Can you tell us what you were comparing it with where the changes were noted?

"A. I believe the comparison is made with the A.6 pool agreement.

"Q. And this is the A.7 agreement; is that correct?

"A. I don't know whether this is the A.7 agreement or a preliminary draft of the A.7 agreement.

"Q. You will note that it purports to have signatories at the back of it?

"A. I didn't note that. That was why I felt it was a draft. The end of the agreement is found on Page 10 and I don't see any signatories on there."

Then I asked that the document, the agreement dated May 12, 1953, be marked Defendant Dodds Exhibit 50, and it is received here in evidence under our stipulation as Defendant's Exhibit 58.

"Q. Referring again to Defendant Dodds Exhibit 49 for identification, after you made these notes and noted the differences between the A.6 pool and this draft did you make any suggestions to the General
175 Electric Company or to anyone in the pool?

"A. I don't have any recollection of that at all.

If I did, it would appear in the correspondence that was made available.

"Q. If it is not in any correspondence you produced it does not exist?

"A. That is right.

"Q. I show you a document which is marked for identification as Defendant Dodds Exhibit 50 which was produced as Exhibit H in answer to our interrogatories in this case. This purports to be an agreement made the 12th day of May, 1953. Apparently this is the A.7 pool agreement. I ask you whether or not you have seen the original of that document?

"A. I have no recollection of having seen the original of that agreement.

"Q. Where did your company get this copy if you know?

"A. Either from the General Electric Company or from their solicitors, Faithfull Owen & Fraser.

"Q. Can you identify this as a copy of the A.7 pool?

176 "A. No. This is a copyl of the A.8. There seems to be some confusion. I am not certain. I believe it is a copy of the A.7 pool although I notice in the answer to interrogatories it was answered as a copy of the A.8 pool.

"Q. The A.7 pool bears the date of that document. Now, whether it is the A.7 pool, I don't know. I am asking you that question. Can you help us on that point?

"A. I believe it is a copy of the A.7 pool agreement.

"Q. I call your attention to Paragraph 1 which is contained on Page 7 of this copy of the agreement. This reads as follows:

"'7. Unless otherwise agreed no licenses are hereby agreed to be granted to import Radio Apparatus into the United Kingdom or to deal in in the United

Kingdom imported Radio Apparatus or Radio Apparatus containing imported component parts to an extent exceeding in value ten per cent of the retail list price of such Radio Apparatus except in each case samples and
177 experimental models for the use of the parties hereto.'

"Were you aware that that language was contained in the pool agreement?

"A. Oh, yes."

Then I asked that an agreement dated September 23, 1957, headed Extension of Broadcast Pooling Agreements of May 12, 1953, and October 29, 1953, be marked as Defendant Dodds Exhibit 51, and they are marked in evidence here as Defendant's Exhibit 59.

"Q. I show you a document which is produced from the Hazeltine files under the number DXBUD 785 which is marked for identification here as Defendant Dodds Exhibit 51. This purports to be an agreement under date of the 23rd of September, 1957, being an extension of the Broadcast Pooling Agreement of May 12, 1953, and October 29, 1953. I ask you whether or not you have seen the original of that document?

"A. I am reasonably certain I have not seen the original of this document.

"Q. Tell us from what source your company re-
178 ceived that copy?

"A. From the General Electric Company."

Then I marked for identification a copy of license agreement under the A.5 pool, which was marked as Defendant Dodds Exhibit 52 for identification, and which is by stipulation here in evidence as Defendant's Exhibit 63.

"Q. In our interrogatories we asked for a copy of the A.8 pool and apparently we have got a little confusion because what is produced in answer to that in-

terrogatory now appears to be the A.7 pool. Have you got in your possession a copy of the A.8 pool?

"A. I certainly have it in our possession somewhere, yes."

179 "Q. As I understand the testimony now, the A.8 pool continues through 1964 or up until some time in 1964; is that correct?

"A. I said that I thought that is my present recollection but I was not positive of that date.

"Q. Can you help us to that extent?

"A. Yes.

"Q. On that same subject, can you tell us whether or not the Hazeltine patent rights were included in that A.8 pool through the General Electric Company of England?

"A. They were.

"Q. I show you a document which has been marked for identification as Dodds Exhibit 52 which is produced from the Hazeltine files under the number DXBUD 840 which purports to be a license agreement under the A.5 pool, or a copy of it. I ask you whether or not you have seen the original of that document.

"A. I don't know what you mean by the original of the document. This is a printed form. I have seen a printed form of which this document is a copy.

180 "Q. Is that a form of the license agreement used by the pool?

"A. I have no direct knowledge on the subject.

"Q. Tell us then from what source you received this document?

"A. I received this document from the General Electric Company.

"Q. So far as you knew, your patents which were in the pool were being licensed under a form as shown by Defendant Dodds Exhibit 52; is that correct?

"A. I believe I previously testified that I had no familiarity or knowledge at all with the A.5 pool and I believe this was a license issued pursuant to the A.5 pool agreement.

"Q. I call your attention to the provision contained in Paragraph 4 of this document, Defendant Dodds Exhibit 52, which reads as follows:

"'The Licensee agrees with the Grantors as follows:

181 "'(a) not without the previous written consent of the Grantors to export or sell for export or knowingly permit to be exported any Broadcast receivers or radiogramophones. Such consent shall be given unless the Grantors or any of them have commitments prohibiting the same but the Grantors' decision shall be accepted as final and any consent will not imply or grant licenses under foreign patents.'

"Were you familiar with the fact that that language was contained in this license agreement?

"A. I believe it was not at the time that the license agreement was in effect.

"Q. I also call your attention to Clause (b):

"'(b) not without the previous written consent of the Grantors to sell, let or hire or put into use any broadcast receiver or radiogramophone which has not been manufactured in the territory for which this License is granted. No broadcast receiver or radio-

182 gramophone shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components and accessories sold therewith (such as for example cabinets and valves and cathode ray tubes, et cetera) to an extent per broadcast receiver and/or radiogramophone greater in value than ten per cent of the retail selling price thereof.'

"Did you know that that language was contained in the license?

"A. I have already testified that I had no familiarity with that license as of the time it was in effect."

Mr. Dodds: That same reservation with respect to these that we discussed previously.

The Court: This doesn't refresh your recollection either.

Mr. Dodds: That is right. I have no familiarity with them.

Mr. McConnell: Well, these are documents that come out of their files in which, under our stipulation, are admissible in evidence.

183 The Court: Yes, but they are not admissible for the purpose that you are mentioning them at this time, showing them to him to refresh his recollection and they fail to do so. For that purpose they are not admissible.

Mr. McConnell: No.

The Court: They are admissible for something else, for some stipulation or something else.

Mr. McConnell. Under our stipulation they are in evidence.

Mr. Dodds: Your Honor, I beg to differ. These documents, these agreements were not stipulated to the actual agreements in effect. They were stipulated to the authenticity of the documents which are in our files, but these documents of which the witness had no knowledge, we don't know whether those are the documents which were used by the English pool or not.

The Court: I assume that the least that we can say about them is that it was somebody's brain child once that these should be a draft of an agreement.

Mr. Dodds: Could have been a draft or had something to do with it.

184 The Court: That is the least.

Mr. Dodds: That is right.

The Court: All right.

Mr. McConnell: (Reading.)

"Q. When did you first acquire familiarity with this license?

"A. I am not sure that I ever had familiarity with it.

"Q. Did you know it had been sent to the Hazeltine Company by General Electric Company?

"A. I don't have any recollection of the subject at all."

Page 158:

"Q. You never made any inquiries as to what kind of license the pool was using?

"A. The answer is no.

"Q. What was the occasion of this license being in your files?

"A. I have no idea. I just found that there.

"Q. It couldn't have been by any chance because you had your patents in the pool?

185 "A. I wouldn't want to conjecture on the subject.

"Q. You think that is a conjecture?

"A. I said I had no knowledge. Anything I would answer beyond that would be conjecture.

"Q. Who was handling this matter?

"A. Mr. Binns.

"Q. Mr. Binns is dead; is that correct?

"A. That is right."

I then identified a document as a copy of A.5 license extension, identified in the Dodds Exhibit 53. It came out of the Hazeltine file. It has been marked in evidence here as Defendant's Exhibit 64.

"Q. I show you a document which is marked for identification as Defendant Dodds Exhibit 53 which was produced as the A.5 license extension and as Exhibit I-1 in answer to our interrogatories."

In other words, we asked them to produce this license in the A.5 pool and they produced it in response to our interrogatories.

186 "I ask you whether or not you have ever seen the original of that document?

"A. I am not sure what you mean by the original of this document because this purports to be a form letter, a blank form letter. I recall that I have seen a typed copy of that blank form letter.

"Q. Up at the top it says 'copy' and I assume it is a copy of something. I want to know whether or not you have seen the original of the document of which this purports to be a copy.

"A. I have seen the piece of paper from which that is a typed copy. I do not believe that it is an original in the ordinary meaning of that word. I think it is just a typed copy.

"Q. From what source did the typed copy come, if you know?

"A. I believe it came from the General Electric Company.

"Q. Did you prepare this document to be submitted to us as the answer to our interrogatory?

187 "A. My office did."

Then I marked an agreement dated August 31, 1948, which concerns the A.6 pool. It comes out of their files and it was marked Defendant Dodds Exhibit 54 for identification, and it is in evidence here under our stipulation as Defendant's Exhibit 65.

"Q. I show you a document which was produced from the Hazeltine files, DXBUD 836, which was marked for identification here as Defendant Dodds' Exhibit 54. This purports to be an agreement under date of August 31, 1948, apparently a form license un-

der the A.6 pool. I ask you whether or not you have ever seen the original of that document.

"A. I have seen a printed form copy from which this document is a photocopy.

"Q. That is really what my question imported. I probably did not phrase it correctly, but this is a photocopy?

"A. That is correct.

"Q. Again I call your attention to Paragraph 4(a) and (b) which reads as follows:

" '(a) not without the previous written consent of
188 the Grantors to sell any broadcast receiver or radiogramophone which has not been manufactured in the territory for which this License is granted. No broadcast receiver or radiogramophone shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components and accessories sold therewith (such as for example cabinets and valves and cathode ray tubes, et cetera) to an extent per broadcast receiver and/or radiogramophone greater in value than ten per cent of the retail selling price thereof.'

"Did you know that clause was in the form license used by the A.6 pool?

"A. I did."

The Court: What was the answer, "I did"?

Mr. McConnell: "I did." He knew it.

The Court: All right.

Mr. McConnell: (Reading)

"Q. When did you first learn that?

"A. Some time during 1948.

"Q. After you had learned that fact your Hazeltine Company patents still remained in the pool, did they
189 not?

"A. Yes, sir.

"Q. Your company received payments or income derived from the pool?

"A. Yes."

Then I marked a copy of a license with respect to the A.7 pool.

The Court: Let me interrupt you at this point. As I understand it, you are reading, at least in regard to this one, a copy of the license between a British licensing agency and a licensee in Britain, is that right?

Mr. McConnell: Is it a copy of a license, your Honor, between the pool and one of its licensees.

The Court: Yes, the pool and it licensee.

Mr. McConnell: Yes.

The Court: Well, I wondered whether there was any contemplation that a licensee would import finished radio or television sets. That strikes me as odd.

Mr. McConnell: Well, I think it is self-evident that somebody thought there was that possibility, because they provided in this agreement that it couldn't be done.

190 The Court: Well, I mean what you are complaining about or what—yes, what you are complaining about is not the licensee will not import and sell Zenith, you are complaining that retailers of the licensees will not import and sell Zenith, isn't that your position?

Mr. McConnell: Yes, but these people that were licensed were either licensed to sell sets or manufacture sets. They could be retailers or wholesalers or manufacturers, and probably were all three.

The Court: Is yous evidence going to show that some of the licensees were retailers who refused or were afraid to import Zeniths for sale?

Mr. McConnell: Well, I don't think that the evidence will show that the licensees—

The Court: I didn't think it would and—

Mr. McConnell: No.

The Court: Go ahead.

Mr. McConnell: This is to show a pattern—

The Court: At least between the pool and the licensee.

Mr. McConnell: Yes, show how they licensed the
191 patents.

The Court: But it doesn't take it beyond that to a retailer.

192 Mr. McConnell: Well, it does because the retailer couldn't sell without a license, and the retailer couldn't get a license to import sets from the pool no matter what he did. This is the way they licensed their patents.

The Court: I mean that a retailer like Polk Brothers, if they had one in England, does not need a license from the British pool to sell sets if they buy them from a British manufacturer, do they?

Mr. McConnell: No, if they bought them from a British manufacturer.

The Court: They don't need a license at all.

Mr. McConnell: No, but if they bought them from an American manufacturer they certainly would need a license to sell them.

The Court: All right, just so that we clear that up.

Would you perhaps like to give your voice a rest? Would you like to take a recess now?

Mr. McConnell: I think that would be very helpful.

The Court: All right.

(Thereupon a short recess was had herein, after
193 which the following further proceedings were had, to-wit:)

Mr. McConnell: I then identified a copy of a license with respect to the A.7-Spool which was marked Defendant Dodds Exhibit 55 for identification.

The Court: These, as I understand it, are four year things, are they? I mean, somebody said so.

Mr. McConnell: Yes, they were three, four or five years. They didn't run the same period of time.

The Court: I see. All right.

Mr. McConnell: But the pools were set up and ran their life.

The Court: And were renewed.

Mr. McConnell: Then were renewed.

The Court: And that is how they get the new number.

Mr. McConnell: That is how they get a new number.

The Court: All right.

194 Mr. McConnell: We have got them all in evidence.

The Court: You don't know what period this covers, like this 7.

Mr. McConnell: Well, A.7—we are getting pretty close down to date now. We are getting up to the 57's.

The Court: All right.

Mr. McConnell: (Reading.)

"Q. I show you a document which has been produced to us in answer to our interrogatory as Exhibit K which has been marked now for identification as Defendant Dodds Exhibit 55 which purports to be a license under the A.7 pool on sound. I ask you whether or not you have seen the document from which this photocopy has been made?

"A. I have.

"Q. From what source did it come, if you know?

"A. General Electric Company.

"Q. It is produced here from files of Hazeltine, I take it?

195 "A. That is correct.

"Q. I call your attention to paragraph four which is contained on page two of the document. This provides as follows:

'(a) Not without previous written consent of the Grantors to sell within the said territory any Broad-

cast Sound Receiver which has not been manufactured in the territory for which this License is granted. No Broadcast Sound Receiver shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components to an extent per Broadcast Sound Receiver greater in value than ten per cent of the retail price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components.'

"Did you know that clause was contained in this license of the A.7 pool?

"A. I did."

196 Then I marked for identification a copy of agreement of license or form of license under the A.7 pool for television which was marked Defendant Dodds Exhibit 56 for identification and which, under our stipulation, is marked in evidence here as Defendant's Exhibit 68.

"Q. I show you a document which has been produced by the Hazeltine Company in anwser to our interrogatories which is described as Exhibit L and which is marked for identification as Defendant Dodds Exhibit 56. This purports to be an agreement of license or form of license under the A.7 pool for television. I ask you whether or not you have seen the document from which the photocopy is made?

"A. I have.

"Q. From what source did your company receive it?

"A. General Electric.

"Q. I call your attention to Paragraph 4 on Page 2 which reads as follows:

" '4. The licensee agrees with the Grantors as follows:—

197 "'(a) not without the previous written consent of the Grantors to sell within the said territory any Television Receiver which has not been manufactured in the territory for which this License is granted. No Television Receiver shall be deemed to have been so manufactured within the meaning of this License which incorporates imported components to an extent per Television Receiver greater in value than ten per cent of the retail list price thereof. The Licensee will if so requested furnish information as to the value of any such imported and incorporated components.'

"Did you know that that clause was contained in this license?

"A. I did."

Then I marked a copy of the license under the A.7 second edition pool, marked Defendant Dodds Exhibit 57, and which is marked in evidence here by stipulation as Defendant's Exhibit 67.

"Q. I show you a document which has been pro-
198 duced in answer to our interrogatories as Exhibit N which is marked for identification here as Defendant Dodds Exhibit 57. This purports to be a license under the A.7 second edition pool. I ask you whether or not you have seen the document from which that photocopy is made?

"A. I have.

"Q. Can you tell us from what source it comes into the possession of your company?

"A. The General Electric Company.

"Q. I call your attention to the language in Paragraph 4 (a) which I am not going to take the time to read again. This is on Page 2. I will let you look at it. Tell us whether or not you were aware of the fact that that language was contained in the agreement.

"A. I was."

Then a copy of a license agreement for television under the A.7 second edition pool was marked as Defendant Dodds Exhibit 58 for identification and marked in evidence here as Defendant's Exhibit 62, pursuant to stipulation.

199 "Q. I show you a document which has been produced in answer to our interrogatories as Exhibit M. This purports to be a license agreement for television under the A.7 second edition pool which has been marked for identification as Defendant Dodds Exhibit 58. I ask you whether or not you have seen the original document from which this photocopy is made.

"A. I have.

"Q. From what source did that document come, if you know?

"A. General Electric Company.

"Q. I call your attention to Paragraph 4 (a) on Page 2 of the document and ask you to look at that and tell us whether or not you were aware of the fact that that language was contained in the license agreement?

"A. I was."

That language is the same as that that I have previously read, your Honor.

The Court: In regard to selling.

200 Mr. McConnell: Yes.

Then the next Exhibit was a copy of a letter to Mr. Binns from the General Electric Company of England signed by Mr. Heather dated September 2, 1947, marked for identification as Defendant Dodds Exhibit 59.

"Q. I show you a document which has been produced from the Hazeltine files, DXBUD 2026 and 2027, which has been marked for identification here as Defendant Dodds Exhibit 59. This purports to be a letter to Mr. Binns from the General Electric Company of

England signed by Mr. Heather. I ask you to examine that document, if you will, and tell us whether or not you have ever seen the original of it?

"A. I have seen the original of this document."

And then I marked for identification a letter dated September 19, 1947, addressed to Mr. T. W. Heather, as Defendant Dodds Exhibit 60 for identification.

"Q. I show you a document which is produced from
201 the Hazeltine files, DXBUD 2022, marked for identification here as Defendant Dodds Exhibit 60. This purports to be a photocopy of a letter under date of September 19, 1947, addressed to Mr. T. W. Heather of the General Electric Company and written by Mr. Binns, President of the Hazeltine Corporation. I ask you if you have ever seen a copy of that letter.

"A. I have no recollection of having seen this letter."

Now I am skipping over to page 171:

"I ask that this be marked as the next Exhibit for identification, a document dated November 9, 1949, and headed 'Outline-A.6 License (British Pool)', marked Defendant Dodds Exhibit 64 for identification.

"Q. I show you a document produced from the Hazeltine files DXBUD 791, marked for identification here as Defendant Dodds Exhibit 64. This purports to be an outline under date of November 9, 1949, of the
202 A.6 license in the British pool. I ask you to examine that, and tell us, if you will, who prepared that.

"A. I did.

"Q. Did you make that analysis from some document?

"A. I have no present recollection beyond what is on the document itself.

"Q. What does the document indicate as to what you made an analysis of?

"A. The title of the document is 'Outline-A.6. License (British Pool)'.

"Q. I call your attention to paragraph four (a) which states:

'4. Licensee agrees: (a) Not to sell Imported Receivers.'

"Is that your conclusion as to what that paragraph provides?

"A. That is a document which I wrote for my own information and it was naturally in shorthand and therefore accuracy was sacrificed for brevity.

203 "Q. Do you think that is an accurate answer?

"A. I think it is incomplete.

"Q. It was complete enough for your purposes at that time.

"A. It was complete enough to serve as a topical reminder to me, yes.

204 "Q. Anything else that may have been in Clause 4 (a) you didn't consider at that time important enough to include in this outline; is that correct?

"A. That is not correct.

"Q. Well, you didn't include it.

"A. I think the document speaks for itself.

"Q. And the document says just that, doesn't it?

"A. I will stand on the document.

"Q. You say that you will stand on the document. Would you vouch for its accuracy?"

There was some colloquy. I finally said:

"As I said before, the accuracy was sacrificed for brevity. This was just a topical outline.

"Q. You don't think it is accurate?

"A. Nothing is accurate other than the complete document of which that is an outline.

"Q. Let me ask you this: Is the statement in Paragraph 4 'Licensee agrees: (a) Not to sell Importer
205 Receivers' true or false?

"A. That statement is not complete and therefore it is not completely true."

I then asked "that this be marked as the next exhibit for identification," a copy of a letter dated December 6, 1949, to Mr. L. B. Dodds, signed by Mr. Owen, as Defendant Dodds Exhibit 65 for identification.

"Q. I show you a document produced from the Hazeltine files as DXBUD 774, marked for identification here as Defendant Dodds Exhibit 65. This purports to be a photocopy of an original letter addressed to Mr. L. B. Dodds of the Hazeltine Corporation to Mr. Owen of Faithfull, Owen & Fraser, Solicitors. I ask you whether or not you received the original of that document?

"A. I did."

I had marked for identification a copy of an outline of the British A.6 pool agreement supplement, as Defendant Dodds Exhibits 66 for identification.

"Q. I show you a document which has been produced from the Hazeltine files, DXBUD 846, which is
206 marked for identification here as Defendant Dodds Exhibit 66. This purports to be an outline of the British A.6 pool agreement supplement. I ask you if you can tell us who prepared that document?

"A. First of all, I believe that the question is not completely accurate because this is an outline of supplements and it outlines several pool supplements. I prepared this document.

"Q. What did you prepare it from?

"A. I have no present recollection independent of the document itself.

"Q. What would you conclude from the document itself that you prepared this from?

"A. I would not want to draw a conclusion but I would say that the title of the document refers to the A.6 pool supplements and I have no reason to doubt the accuracy of that title.

"Q. Did you have the agreement supplements of the A.6 pool in your possession at that time?

"A. I don't have any present recollection.

207 "Q. Do you know what the occasion was for preparing this document?

"A. I do not know of any specific occasion that called for the preparation of that document, no.

"Q. Generally, this analysis shows additional parties getting in as pool members, does it not? It also shows the terms under which they got into the pool.

"A. May I see the document?

"Q. Sure.

"A. It purports to show that."

208 "Q. I show you a document produced from the Hazeltine files, DXBUD 765, marked for identification here as Defendant Dodds Exhibit 67. This purports to be a memorandum to the file of a conference with C. O. Stanley of Pye, Limited re British Pool and general situation in Great Britain. This is under date of June 19, 1950. It shows that a copy was sent to you. I ask you to examine that and tell us whether or not you received the copy as indicated on that document?

"A. Yes, I did."

And I marked that for identification.

I marked an exhibit which was a copy of a letter dated

February 12, 1951, addressed to Mr. Thomas W. Heather, Director, marked Defendant Dodds Exhibit 68.

"Q. I show you a document produced from the Hazeltine files, BXBUD 314, marked for identification as Defendant Dodds Exhibit 68. This purports to be a copy of an air mail letter to Mr. Heather of the General Electric Company from you under date of
209 February 12, 1951. I ask you whether or not you wrote and sent that document?

"A. I did.

"Q. At the time you wrote this letter were you desirous of entering into some further pools in England with the Hazeltine patents?

"A. We were desirous of getting additional income from the Hazeltine patents by any means at our legitimate disposal.

"Q. You thought getting into the pool was a legitimate disposal?

"A. That was one possibility."

And I marked a letter dated April 10, 1951, to L. B. Dodds as Defendant Dodds Exhibit 69.

"Q. I show you a document produced from the Hazeltine files, DXBUD 308A, which is marked for identification as Defendant Dodds Exhibit 69. This purports to be a letter to you under date of April 10, 1951, from General Electric. I ask you whether or not you received the original through the mails?

210 "A. I did."

And I marked for identification a copy of a letter dated February 23, 1951, to Mr. Owen re Hazeltine Corporation, as Defendant Dodds Exhibit 70, which is received here in evidence pursuant to the stipulation as Defendant's Exhibit 87.

"Q. I show you a document which has been pro-

duced from the Hazeltine files, DXBUD 763, which is marked for identification as Defendant Dodds Exhibit 70. This purports to be a letter to Mr. Owen with reference to the Hazeltine Corporation from A. F. Cornock. I ask you if you ever saw the document which that purports to be a photocopy of?

"A. I did.

"Q. I call your attention to this statement on the last page of this document:

" 'The present position is that about 90 manufacturers have taken licenses, that the Pool is keeping a careful watch on the activities of nonlicensees, that an infringement action is in progress against Sobell In-
211 dustries, Limited, and that other infringement actions are contemplated—counsel's advice having been taken in regard to at least one such Action. The expenses of these proceedings are being divided among the licensors in proportion to their respective shares of Pool revenue.

" 'Broadly, therefore, my understanding of the position is that the majority of manufacturers of any importance have taken licenses; and you will see that the Pool is being active in its steps to stop infringement.'

"Did this statement come to your attention at or about the time of this letter?

"A. Yes.

"Q. Did you oppose or object to that procedure of suing infringers?

"A. No."

212 Then there was a copy of a statement of royalties received from the A.5 pool from April 1, 1944 to December 31, 1947, marked as Defendant Dodds Exhibit 71.

"Q. I show you a document DXBUD 746, marked

for identification as Defendant Dodds Exhibit 71. This purports to be a statement of royalties received from the A.5 pool from the first of April, 1944 to the 31st of December, 1947, and from the first of January, 1948, to the 31st of March, 1951. Do you know who prepared that statement.

"A. No. I do not.

"Q. Do you know from what source that document is produced?

"A. General Electric Company."

I then marked the next exhibit for identification as Dodds Exhibit 72, which was a copy of an air mail letter to Mr. A. F. Cornock, dated June 11, 1951. It is marked in evidence here as Defendant's Exhibit 73.

"Q. I show you a document marked for identification Defendant Dodds Exhibit 72 which was produced
213 from the Hazeltine files, DXBUD 303-A and B. This purports to be an air mail letter addressed to Mr. Cornock of General Electric Company under date of June 11, 1951. This, apparently, was written by you. I ask you whether or not you wrote and sent that letter?

"A. I did."

I then marked a copy of a letter to L. B. Dodds dated June 28, 1951 from Mr. Cornock, marked as Defendant Dodds Exhibit 73 for identification, marked in evidence here as Defendant's Exhibit 74.

"Q. I show you a document which was produced from the Hazeltine files, DXBUD 301-A and B, which was identified here as Defendant Dodds Exhibit 37. This is a letter to you from Cornock of General Electric Company on the subject of Hazeltine patents in Eire. I ask you if you received that letter through the mail?

"A. I did.

"Q. Was that letter received in answer to Defendant Dodds Exhibit 72 for identification?

"A. I believe it was."

214 "Q. I show you a document which has been produced from the Hazeltine files, DXBUD 700, marked for identification as Defendant Dodds Exhibit 74. This purports to be a letter to W. A. MacDonald, President of the Hazeltine Corporation from T. W. Heather. I ask you whether or not you have seen the original of which document purports to be a copy?

"A. I did."

Then I identified a copy of a letter dated October 30, 1952, to Mr. Thomas W. Heather, as Dodds Exhibit 75, which is marked in evidence here as Defendant's Exhibit 76.

"Q. I show you a document which has been produced from the Hazeltine files, DXBUD 696 and 697, which is marked for identification as Defendant Dodds Exhibit 75. This purports to be a letter from Mr. MacDonald, the President of Hazeltine to Mr. Heather, the Director of General Electric under date of October 30, 1952. I ask you whether or not you have ever seen a copy of the letter that was sent?

215 "A. I have.

"Q. Did you have anything to do with drafting that letter?

"A. I did.

"Q. What did you have to do with it?

"A. I wrote it.

"Q. Was that your practice in Hazeltine to write the president's letters on matters that involved patents?

"A. No, not uniform practice. It was done occasionally.

"Q. I call your attention to the statement quoted in the fourth paragraph of this letter:

'It is our suggestion that Mr. Dodds, who is fully acquainted with our relationships with your company and through you with the Pools go to London to discuss the matter directly with you or whatever representative of your company will participate in the negotiations with the Pool.'

"That was your statement, wasn't it?

216 "That was your statement that you were thoroughly familiar with the Pool and the relationship of General Electric with the Pool?

"A. That was my statement which I wrote.

"Q. You were suggesting that you make the trip to England to sit in on the negotiations. Now, I ask you this: Did you make such a trip?

"A. I did."

217 Next I identified a copy of a draft of a letter from MacDonald to Heather dated October 29, 1952, marked as Defendant Dodds Exhibit 76, and introduced and received in evidence by stipulation here as Defendant's Exhibit 93.

"Q. I next show you a document produced from the Hazeltine files DXBUD 733, which is marked for identification as Defendant Dodds Exhibit 76. This purports to be a draft of a letter from MacDonald to Heather. I ask you whether this is a draft which you prepared?

"A. It is."

Then I marked for identification a copy of a longhand letter dated Friday, November 14th to "Dear Jack and Mack" on the stationery of the Mount Royal Hotel, as Dodds Exhibit 77 for identification.

"Q. I show you a document marked for identifica-

tion as Defendant Dodds Exhibit 77 which was produced from the Hazeltine files but apparently does not have the file number or production number on it. This is a longhand letter to Jack and Mack from you, ap-
218 parently written on the stationery of the Mount Royal Hotel of London. I ask you whether or not you wrote and sent that letter?

"A. I did.

"Q. How long were you engaged in the negotiations which you are referring to here in Defendant's Exhibit 77?

"A. I was in London a total of ten days of which perhaps half was spent in negotiations about which you inquire.

"Q. You say here on Page 2 of this letter:

'Heather outlined the Pool discussions to date.'

"Q. Heather was a Director of General Electric, was he not?

"A. Yes.

"Q. You say:

'The proposal is to include the same members except BTH, which is being dropped. EMI, Philips, and Marconi have already made a three-party agreement com-
219 plete except for the allocation of percentages. I was given a copy confidentially. It follows rather closely the A.6 Pool and is for five years. It provides for the addition of other 'joining parties'. One point of difference is that the fifteen thousand pounds of royalty ceiling for members has been removed. A few of the larger companies exceeded this figure during the A.6 Pool but not very much.'

"Can you recall who the members of that pool were?

"A. I do not recall independent of the document itself.

'Q. Heather said that the British industry favored

a single pool license and that the members also did, so it was only a question of terms.'

"Did you object to the single pool license?

"A. No.

"Q. You didn't?

"A. Of course not.

220 "Q. Did you at that time see the form of the single license that was going to be used by the pool?

"A. I believe not.

"Q. You were familiar, however, with the single form of license which had been used during the A.6 pool?

"A. Yes.

"Q. Was there any discussion that that license should be changed in any manner?

"A. I do not recall any such discussion.

"Q. Did you at that time meet a gentleman by the name of Shoenberg?

"A. No.

"Q. Did you ever meet him?

"A. No."

221 I go to Page 188.

Mr. Dodds: What page?

Mr. McConnell: 188.

"Q. I show you a document produced from the Hazeltine files, DXBUD 643 and 644 which is marked for identification as Defendant Dodds Exhibit 78. This purports to be a letter to the Hazeltine Corporation on the letterhead of the General Electric Co., Ltd., under date of November 20, 1952. I ask you whether or not you have seen the original of that document?

"A. I have.

"Q. The first paragraph of this letter states:

'This is to confirm the agreement arrived at between us today, whereby the Hazeltine Corporation grants

us the unconditional right to include its patents in the A.7 Broadcast Licensing Pool, which is about to be formed for a period of five years from the first of January, 1953, upon the understanding that the Hazel-
222 tine G. E. C. patents will be allocated such a number of points that the ratio of those points to EMI's points will be as 17 to 100.'

"Had such an understanding been reached at that time?

"A. The understanding as to the allocation of points? Is that what you are inquiring about?

"Q. He states the conditions as stated in Paragraph 1 of this letter. He says: 'This is to confirm the agreement arrived at between us today.' You may look at the document.

"A. The agreement described in the first paragraph of the letter had been arrived at.

"Q. I show you a document which is produced by Hazeltine, DXBUD 641 and 642. This is marked for identification as Defendant Dodds Exhibit 79, purporting to be a memorandum of a telephone conversation between Mr. Binns and Mr. Dodds under date of November 20, 1952. A copy of it is shown as being sent
223 to Mr. L. B. Dodds.

"I ask you if you have ever seen that before?

"A. Yes. I have seen this or a copy of it.

"Q. Does that accurately set forth the telephone conversation that you had?

"A. At this time I have no recollection of the telephone conversation other than as set forth in this memorandum."

"Q. This account of your conversation signed by Mr. Binns stated:

'I told him that, of course, I had color in mind. He said that they had discussed it. It would be possible

but not very practical and that the changes of increasing it were slim. He said he had discussed the matter with the pool members and it was their opinion that irrespective of what happened in the United States, the chances of color coming into effect during the life of the pool was practically zero in Great Britain.'

224 "What pool members had you discussed it with?

"A. I didn't discuss it with any pool members.

"Q. He quotes you here as saying you had discussed it with pool members.

"A. I think that was a mistake.

"Q. You think he misunderstood you in the conversation?

"A. That could be.

"Q. Did you discuss it with anybody?

"A. I recall discussing it with representatives of the General Electric Company. I don't recall discussing it with anyone else.

"Q. The General Electric Company was a member of the pool, was it not?

"A. I believe so.

"Q. I show you a document which has been produced from the Hazeltine files DXBUD 635, marked for identification as Defendant Dodds Exhibit 80, this being a letter by Mr. Cornock to Mr. L. A. Dodds on the letterhead of the General Electric Co., Ltd. and

225 dated the 27th of November, 1952. I ask you whether or not you received that letter?

"A. Yes. I did.

"Q. Mr. Cornock states in this letter that he is preparing a note of these various discussions during the past fortnight about the information of a new broadcasting licensing pool. Did you ever get a copy of his notes on that subject?

"A. I don't have any present recollection. If I

did, it would be in the files which had been available to the defendant for inspection."

226 "Q. I show you a document produced from the Hazeltine files, DXBUD 679-A, marked for identification as Defendant Dodds Exhibit 81, which purports to be notes of discussions with Hazeltine Corporation, Mr. L. B. Dodds and E. M. I. at the Magnet House, November 13, 1952; Present: Mr. T. W. Heather, Mr. L. B. Dodds, Mr. K. H. Nalder, and A. F. Cornock. I ask you if you have seen those notes before?

"A. Yes, I have.

"Q. Whom did you receive them from?

"A. The General Electric Company.

"Q. Are those the notes that Mr. Cornock refers to in his letter of November 27, 1952, discussions about the A.7 pool?

"A. I believe they are.

"Q. Can you tell us whether or not his notes accurately describe what happened over there in those discussions?

"A. I certainly could not without reading them through carefully and I doubt if I would have any recol-
227 lection at this time of any details contrary to what is set forth in those notes.

"Q. Did you read them at or about the time you received them?

"A. I did.

"Q. Did you object to them in any way?

"A. I do not recall, but if I did it would be in correspondence made available to the defendant for inspection.

"Q. He notes here on Page 4:

'As between Hazeltine and GEC, it was agreed that they wished to act in concert in licensing, . . .'

"Is this a fact, that you wished to act in concert?

"A. I don't believe that is the term that I would have chosen to describe what our objectives were at that time.

"Q. You think that term that he used is a little embarrassing at this time?

"A. No."

"Q. Then it is stated at the bottom of Page 4:

228 'The general sense of the discussion was that EC would not continue to pay Hazeltine a direct royalty for the use of Hazeltine patents in Great Britain, apart from Hazeltine's share of pool income.'

"Does that accurately set forth your understandings?

"A. No.

"Q. It is not correct?

"A. It is not.

"Q. On the top of Page 8 of these notes it is stated:

'Mr. Heather, in the light of this, suggested that one should not, in the forthcoming discussions with EMI attack the general nature of the Pooling Arrangement, but should argue about the method of evaluating patents. Mr. Dodds said he was generally of the same view, but felt that Pool Voting by a majority of points holding was objectionable and might also be criticized.'

229 "Did you make that comment?

"A. I don't recall whether I made that specific comment but I do recall that I had criticized the operation of the pool by a control of the majority votes based on the points allocated to the various pool members.

"Q. On Page 16 he states:

'Mr. Heather said that he did not feel it was necessary to argue specially about the relative

positions of the GEC and EMI; but if it was desired that Hazeltine should be members, he felt it was necessary to come to meet them.

'Mr. Dale-Harris then said that he had heard from Mr. Shoenberg that, if the offer could be accepted at once, EMI would offer Hazeltine/GEC a holding in the ratio.

'EMI: Hazeltine/GEC: 100:17 instead of the 100:12 approximately computed previously—it being expected that the total Pool parties' points would be about 200.

230 'After a short withdrawal for consideration, Mr. Heather and Mr. Dodds told EMI that each would recommend his Company to accept this proposal.'

"Did you say that?

"A. Did I say what?"

"Q. That you would recommend that your company would accept the proposal?

"A. Yes.

"Excuse me. I said that I would recommend to Hazeltine Corporation that it should accept that proposal.

"Q. That is what I mean.

"A. Yes.

231 "Q. I show you a document which has been produced from the Hazeltine files, DXBUD 628, 629 and 630, which is marked here for identification as Defendant Dodds Exhibit 82. This purports to be a letter on the letterhead of the General Electric Co., Ltd., under date of the 1st of December, 1952, addressed to L. B. Dodds of the Hazeltine Corporation from Mr. Nalder. I ask you if you received that letter?

"A. I did.

"Q. In this letter reference is made to enclosing to

you a copy of the new proposed pool agreement. He states:

> 'I shall be grateful to hear from you as soon as possible,'

whether you find yourself in agreement with the wording.

"Could you tell us whether or not you replied to this letter?

"A. I don't have any present recollection.

232 "Q. Referring to this letter, on Page 2, Mr. Nalder states:

> 'Since you left England I have had one or two conversations with Mr. Dale-Harris . . .'

"Who is Mr. Dale-Harris?

"A. Mr. Dale-Harris is an employee of Electrical and Musical Industries.

"Q. That is the company known as EMI?

"A. That is correct.

"Q. He states:

> 'I received late last Friday, an Agreement for our signature whereby GEC becomes a Joining Party to the A.7 Pool. In this Agreement GEC represents that it can put into the Pool not only GEC's own Patents but also those of Hazeltine and are allowed 12 points as against EMI's 100, but contemporaneously EMI will give us a covering letter agreeing to pay to us out of their own share of the Pool, an amount equal to the additional amount to which GEC would be entitled by
> 233 way of share in the Licensing Revenue Pool had the number of points allotted to GEC been 17 instead of 12. Mr. Heather informed Mr. Dale-Harris that if towards the other pool members, EMI felt that they could only justify allotting to

GEC (and Hazeltine) 12 points, he would not object to this amount appearing in the formal Agreement provided, of course, that EMI made up the total number to 17.'

"Did you agree to that Agreement?

"A. Substantially, yes.

"Q. You did not object to GEC putting Hazeltine patents in the A.7 pool, did you?

"A. That is correct.

"Q. I show you a document which is produced from the Hazeltine files DXBUD 251 A, 251 B, 251 C, marked for identification as Defendant Dodds Exhibit 83, which purports to be a letter under date of December 12, 1952, addressed to Mr. K. H. Nalder o fthe General
234 Electric Company written by you, apparently. I ask you if you did write that letter and send it to Mr. Nalder?

"A. I did.

"Q. I notice that you made certain suggestions as to the pool agreement, changes that should be made in the draft. Do you know whether or not those changes were made, the changes you suggested?

"A. Well, first of all, I think there should be a clarification. The term 'full agreement' as used in that letter is not the same as 'pool agreement' that we have been using in this testimony. The pool agreement there means the agreement between Hazeltine and the General Electric Company relating to the pool.

"Q. So you were not suggesting any changes in the actual pool agreement but only in your agreement with GEC?

"A. No. The letter does not consider the pool agreement itself in the sense we have been using that term.

"Q. What agreement are you referring to when
235 you are going to make changes?

"A. I was referring to a draft which preceded the Hazeltine General Electric Agreement relating to the pool. I don't locate it at the moment, but I believe it has been put in before. I believe it was Defendant's Exhibit 39.

"Q. I call your attention to the paragraph on Page 3 of this letter which reads as follows:

> 'You understood that our License Agreements are very similar to the Pool License in that they are blanket licenses under all of our patent rights with no portion of the royalties specifically allocable to any patent or patents. Therefore, the patent rights which Hazeltine might acquire from your company under this Agreement would not represent a source of additional revenue to it.'

"What are you referring to as 'our license agreements?'

"A. I am referring to the license agreements of
236 the Hazeltine subsidiary, Hazeltine Research, Inc., under the United States patents.

"Q. I show you a document which has been produced from the Hazeltine files DXBUD 600 and DXBUD 601. This purports to be a note of discussion between MacQueen and Laczay on September 14, 1953, with a copy to L. B. Dodds. It is marked for identification here as Defendant Dodds Exhibit 84. I ask you whether or not you received a copy of this at or about that time?

"A. I did."

237 "Q. First, who is A. V. Loughren?

"A. He is at present President of the Key Color Studios, Inc.

"Q. It states here:

'In accordance with a suggestion which I believe was originally made by Dodds, Laczay visited MacQueen on September 14 to obtain from him a general picture of the structure and operation of the A.7 Pool, to assist Laczay in establishing some background from which he might appraise the possibilities for a proposed pool in one or more of the countries of Continental Europe.'

"Did you make that suggestion?

"A. I believe I did.

"Q. Who is Laczay?

"A. He was an employee of AGA.

"Q. This gentleman states:

'I joined them for this discussion, in view of Hazeltine's interest both in the A.7 pool, and in the matter which Laczay had under consideration.'

238 "What was the interest that Hazeltine had in the matter that Laczay had under consideration?

"A. As I have previously testified, the AGA Company had an agreement with Hazeltine for the licensing of the Hazeltine patents in Continental Europe, so it was to Hazeltine's interest to assist Laczay in any way in promoting that program.

"Q. You thought it was a good idea to have a pool in Europe similar to the A.7 Pool in England?

"A. Not necessarily.

"Q. What was the point of going in to find out what they were doing in the A.7 Pool?

"A. Simply that if one is going to make a decision to do something or not to, it is a good idea to find out what the experience has been. As a result of that, you might decide it advantageous or not advantageous.

"Q. He states:

239 'In the course of the conversation, MacQueen ar-

ranged to provide copies of the A.7 license agreement to both Laczay and Hazeltine; he also separately arranged to furnish to Hazeltine a copy of the agreement between the licensors; these copies have been already forwarded to Mr. Dodds.'

"Was that so? Had they been forwarded to you?

"A. I don't have any recollection as to when I received them. I don't know whether it was before or after that date.

"Q. You did receive them?

"A. I did receive them and have so identified them in this deposition.

"Q. Did Laczay, after this look-see at the operation, structure, and background of the A.7 Pool set up any pools over in Europe in which Hazeltine patents were used?

"A. It seems to me there are several questions.

"First of all, I don't know whether he had a look-
240 see at the operation of the A.7 Pool.

"Secondly, I do not have any knowledge of any patent licensing pools which Laczay set up in Europe with one possible exception: in France he did have rights to represent not only Hazeltine but EMI and I do not know, I do not recall, just how closely the licensing under the two groups of patents was carried out.

"Q. Was there a GEC Pool there in France?

"A. I don't have any knowledge of any such pool.

"Q. I show you a document produced from the Hazeltine files, DXBUD 1109, 1110 and 1111, which purports to be signed by you as a memorandum of the discussions with Mr. T. W. Heather of GEC; this is dated October 26, 1954. It is identified here as Defendant Dodds Exhibit 85. I ask you whether you wrote that memorandum?

"A. Yes. I wrote this memorandum.

241 "Q. You quote Mr. Binns here as expressing a view that he could see no reason for terminating a satisfactory working relationship which had produced such good results which apparently are the GEC-Hazeltine Agreements. Is that what he said?

"A. I have no recollection independent of the document.

242 "Q. Do you remember that you did have this discussion?

"A. I do remember having a discussion.

"Q. You say with reference to the A.8 Pool:

'There was some considerable discussion with respect to the timing and nature of negotiations for the A.8 Pool. Mr. Heather explained in some detail why he felt rather strongly that it would be inadvisable for GEC and Hazeltine to attempt to form a group with some of the pool members before negotiation with EMI. He felt that while EMI's methods were often iritating, they were, in the final analysis, rather fair in their negotiations. He also felt that any such preliminary groupins might be intepreted by EMI as 'ganging up', which might completely change their attitude.

'Mr. Heather felt that even now we should com-

243 mence preparation for the A.8 Pool negotiations. He felt that it would be helpful if we knew a little better or just where each of the major Pool Members stood. He was going to attempt to obtain information on GEC's position and on the EMI position from his Patent Department. It was agreed that the writer would prepare a general and brief review of the Hazeltine patents and patent applications in England and would send three copies to Mr. Heather.'

"Did you prepare such a list and send it to Mr. Heather?

"A. I don't have a present recollection but the file that the defendant has inspected would reveal whether or not I did.

"Q. After that discussion, did your Hazeltine patents go into the A.8 Pool?

"A. Many year later.

"Q. I show you a document produced from the Hazeltine files, DXBUD 559, 560, 561, and 562, iden-
244 tified here as Defendant Dodds Exhibit 86, which purports to be an air mail letter under date of November 12, 1954, to T. W. Heather, General Electric Company. It does not show who signed it. I ask you if you could tell us, first, whether you wrote the letter?

"A. I wrote this letter. I am sure I wrote the letter.

245 "Q. You say here: 'Yesterday I had a cordial luncheon conference with Dr. Shackleford'. Who is Dr. Shackleford?

"A. At one time he was in charge of the International Licensing Division of RCA.

"Q. This is in 1954 when you wrote this. Was he at that time in charge of International licensing?

"A. I do not recall. I might by refreshing my recollection from the letter because shortly after that he retired from that position. It was about that time. I don't recall the date.

"Q. Perhaps this will refresh your recollection:

"'. . . I asked him whether they had any present intention of not renewing their grant of licensing rights to EMI. He said that certainly they had no intention in any way to obstruct formation of the A.8 pool but that in confidence, they were not too happy

with their arrangement with EMI and that unless certain changes would be made in that arrangement
246 they would not extend it. When I suggested that this might raise a difficult problem for the pool if EMI had rights for the initial part of the term and another party for the remainder, he stated that their arrangement with EMI was non-exclusive and that if they were unable to conclude a satisfactory extension of that arrangement with EMI, they would negotiate with some other party for the full five-year term of the A.8 pool. You probably were aware of the fact that EMI's rights to the RCA patents are non-exclusive, but it was a surprise to us.'

"Did you know that up until 1945, at leaest as to patents which had been isuued prior to 1945, EMI had exclusive licensing rights on RCA patents?

"A. At that time I did not know that.

"Q. Did you learn that at some time subsequent?

"A. Yes.

"Q. It was only with regard to patents after 1945
247 that they were non-exclusive?

"A. I learned that within the last six months.

"Q. In these prior pools did you know that the RCA patents had been put into these pools through EMI?

"A. That was not my understanding.

"Q. You didn't know when you were discussing with Shackleford that up to that time they had put in the RCA?

"A. It was my understanding that they had not.

"Q. According to this you state: 'I asked him whether they had any present intention of not renewing their grant of licensing rights to EMI.'

"You knew at that time they had given their rights to EMI to license their patents, didn't you?

"A. I knew they had granted to EMI the right to grant non-exclusive licenses under their patents.

"Q. Did you know that the RCA patents were in the A.7 pool?

248 "A. To my best recollection they were not.

"Q. They were not?

"A. They were not.

"As I previously testified as of that time I was not aware of the differentiation between the pre-1945 patents and the post-1945 patents.

"Q. You suggested that it might raise a difficult problem for the pool if EMI had rights for the initial part of the term and another party for the remainder. What did you mean by that?

"A. I don't know that I can express it any more clearly than I have expressed it in this letter.

"Q. What initial part of what terms?

"A. That refers to the term of the A.8 pool.

"Q. You are talking about having licensing for a part of it and not having licensing for all of it; is that right?

"A. Yes.

249 "Q. You just told us that EMI didn't have any rights and didn't put anything into the pool.

"A. I didn't say that at all.

"Q. What do you know about that? Did they put RCA patents in the pool at any time to your knowledge?

"A. As of that time, to my knowledge—

Wait a minute! I am not familiar back of the A.6 pool. But from the A.6 pool on, to the best of my knowledge, RCA did not put its patents into the several successive pools.

"Q. Did EMI put their patents in the successive pools?

"A. Yes.

"Q. They had the exclusive right to license the RCA patents as two patents which had issued up to 1945?

"A. You are asking me what I now know. I didn't realize that EMI had those exclusive rights.

250 "Q. Do you realize now that EMI had put many before in the pool?

"A. Yes.

"Q. What were you asking assurances for from Shackleford about the pool if you didn't think his patents were any good anyway?

"A. I think the letter speaks pretty clearly. They were not in the pool but EMI did have non-exclusive licensing rights under the RCA patents so that there was assurance that the RCA patents would be made available to pool licensees and if that assurance were to terminate in the mid-term of the pool it would raise a difficulty.

"Q. Did you want to get them into the pool?

"A. I didn't want to get them into the pool at all.

"Q. You were not discussing this with Shackleford with the idea in mind of getting the patents into the pool?

"A. No.

"Q. What was the purpose of your talking with

251 Mr. Shackleford?

"A. I don't have any recollection about what is in the letter.

"Q. Do you remember whether you called him or he called you?

"A. I do not recall.

"Q. Mr. Shackleford had sort of a dim view of these pools, didn't he?

"A. I don't believe I can answer that.

"Q. Didn't he tell you at one time that he thought it was very questionable as to whether or not they didn't violate the United States antitrust laws?

"A. I am sure he did not tell me that because he was not a lawyer. I don't think he would express an opinion as to what would and what would not violate the antitrust laws.

"Q. Your Mr. Binns was quite free with his legal advice. He was not a lawyer, was he?

"A. Mr. Binns was not a lawyer.

"Q. I show you a document which is marked from Hazeltine's files DXBUD 549, marked for identification as Defendant Dodds Exhibit 87 which purports to be a letter from 'Jack' which we assume to be Binns —to 'Dear Larry,'—whom I assume to be you. This is written on the letterhead of the Dorchester in Lon-

252

"A. Yes. I received this letter.

"Q. He states: 'Today I went out to Hayes and had lunch with Schoenberg.' Who is Schoenberg?

"A. Mr. Schoenberg is connected with Electrical Musical Industries. I don't know what his exact title is.

"Q. Wasn't he in charge of their patent licensing?

"A. I don't know that.

"Q. He states: 'After lunch I spent considerable time with Schoenberg. He tried very hard to get direct association with us, but I told him we saw no reason at present to sever our relations with GEC.'

253 Did you read this letter at about the time you received it?

"A. I did.

254 "Q. He stated: 'In any event it was left that I would get in touch with Schoenberg the second week in September when we can discuss the possibilities of a deal.'

"Do you know what that deal was?

"A. I do not.

"Q. He states: 'In the meantime I would appreciate your opinion as to whether we can enter into a direct deal with EMI, also the pros and cons of our British situation, so I a mnot caught off guard.'

"Did you give him your opinion as to whether or not you could enter into a direct deal with EMI?

"A. I don't have any present recollection. If I did, it would be in the files which have been made available for inspection.

"Q. I show you a document marked for identification as DXBUD 547 and 548, that being the Hazeltine number. This is marked here for identification as Defendant Dodds Exhibit 88. It purports to be a letter to Mr. Jack Binns at The Dorchester in London under
255 date of August 8, 1955, from you. I ask you if you wrote that letter and sent it to Mr. Binns?

"A. I did.

"Q. Is that letter in answer to the handwritten letter which was written here as Defendant Dodds Exhibit 87?

"A. I believe it is.

"Q. You state: 'In view of your discussions, however, we will not allow any others to lapse until it can be determined whether a deal can be made with EMI.'

"Do you know what deal you were talking about?

"A. I believe this related to a possible deal with EMI in fields outside of broadcasting receivers.

"Q. I show you a document marked for identification DXBUD 535, 536, 537, 538, and 539, those being the Hazeltine identification numbers, and which is marked here as Defendant Dodds Exhibit 89 for identification. It purports to be a letter to Mr. Dodds with reference to the British broadcasting licensing pool

256 under date of May 8, 1956, from Mr. Cornock of the General Electric Company. I ask you if you received that document?

"A. I did.

"Q. On Page 3 of this document Mr. Cornock states:

"'We know that EMI's present agreement with RCA ends in 1960. We also know that, even under the present agreement, EMI cannot grant direct licenses under RCA patents—though RCA do grant licenses, without additional royalty, to Pool licensees nominated by EMI.'

"Did you know about that arrangement?

"A. I believe I did.

"Q. How long had you known about that arrangement?

"A. I think I learned about it in 1952.

"Q. The licensees of the pool got access to the RCA patents were getting to the licensees of the pool?

"A. Again, I don't think RCA patents got into the
257 pool in any manner. That was the manner in which the pool licensees obtained rights under the RCA post-1945 patents.

"Q. The licensees of tthe pool got access to the RCA patents in this manner; did they not?

"A. Yes.

"Q. Being a licensee of the pool gave them a right to get access in that manner, didn't it?

"A. I don't know that.

"Q. Do you know whether or not that arrangement was worked out by RCA to attempt to obviate objections which their counsel had to their pools as violations of the American antitrust laws?

"A. I don't know that.

"Q. You never heard that?

"A. I didn't say that.

"Q. Did you hear it from any source?

"A. Oh, yes.

"Q. From whom did you hear it?

"A. I believe from the people in the General Electric Company.

258 "Q. They say:

" 'The inferences we draw from this are: Firstly, that the balance of probability is that EMI will, in future, not have more control over RCA patents than in the present pool; and, secondly, that RCA may contemplate putting their patents direct into the next pool rather than through EMI.'

"Did they ever tell you on what they based that inference aside from this letter?

"A. No.

259 "Q. Now it states:

'Whichever of us is to make the move, there is a preliminary point to be settled: Namely, since we do not know what RCA's position will be (and this may greatly affect EMI's position), ought one to sound RCA on the matter before approaching Mr. Schoenberg, or should one treat the RCA question as to one of the first points to be raised with Mr. Schoenberg during the talk with him? (We could, of course, raise the question with Commander Mayer over here, or you might raise it with RCA on your side of the Atlantic, whichever seems more convenient, if it is decided to try to obtain further information before trying to discuss the position with Mr. Schoenberg.)'

"Did you approach anybody at RCA to find out what the position was with reference to them?

"A. I think I did.

260 "Q. Whom did you approach?

"A. Again I don't remember the dates. It would have been either Doctor Shackleford or Mr. Karns.

"Q. What did they tell you?

"A. My best recollection was that at the time they said they had not made up their mind what they were going to do.

"Q. Did you know a Mr. Mayer, Commander Mayer?

"A. I know the name. I have never met him.

"Q. Do you know whether or not Mr. Cornock approached Mayer on the job?

"A. I do not know.

"Q. I show you a document produced from the Hazeltine files, DXBUD 528, 529, 530, 531 and 532, marked for identification here as Defendant Dodds Exhibit 90, under date of May 28, 1956, the letter being sent by airmail to Mr. Cornock of General Electric Company, apparently written by you, on the subject of the broadcast license pool in Great Britain. Did
261 you write that letter and send it to Mr. Cornock?

"A. Yes.

"Q. On page 2 of this letter you state:

'As suggested above, I did discuss with Mr. M. E. Karns, who succeeded Doctor B. Shackleford as Director of the International Licensing Division of RCA, the RCA/EMI agreement. He confirmed the fact that that Agreement terminates at the end of 1960, and said further that no approach had been made on either side with respect to its extension. He said also that their decision as to whether or not to extend the EMI agreement would be delayed as long as possible in view of an antitrust suit which the government brought against them. There have been extensive negotiations between RCA and government lawyers with respect to a settlement of the suit to

avoid a protracted and diverting trial. They were
262 quite unsuccessful in reaching an acceptable settlement with Mr. Stanley N. Barnes, Assistant Attorney General of the United States in charge of the antitrust division. However, some weeks ago, Mr. Barnes was elevated to the Federal Court of Appeals and I rather gathered that RCA is somewhat more hopeful in reaching a settlement with his successor. In any event, since RCA's license activities abroad are one of the targets of the antitrust suit, they want to avoid changing the status quo if at all possible until a settlement is reached or negoiations finally break down.'

"Is that a true statement of your conference with Mr. Karns at RCA?

"A. I have no present recollection in detail beyond what is in the letter itself.

"Q. This was made almost contemporaneous with the talk, was it not?

"A. I believe so.

263 "Q. Did Mr. Karns discuss with you the view of their attorneys that these pools were illegal?

"A. I don't recall such a discussion.

"Q. I show you a document, DXBUD 525, marked for identification as Defendant Dodds Exhibit 91, which purports to be a memo to Mr. Binns from you under date of May 29, 1956. I ask you whether or not you wrote that memorandum?

"A. I did.

"Q. I show you a document produced from Hazeltine files, DXBUD 515, marked for identification as Defendant Dodds Exhibit 92, purporting to be a letter from Binns to you under date of August 10, 1956. This is on the letterhead of The Dorchester. I ask you if you received that letter.

"A. I did.

"Q. In this letter Mr. Binns states:

'There have been some developments in EMI that make it inopportune to start discussions as yet. Heather told me in confidence and I will tell
264 you when I get back to New York. There is also some doubt as to Schoenberg's status.'

"What was this confidential matter that made it inopportune to start discussions with EMI?

"A. I don't have any personal knowledge of the subject.

"Q. Mr. Binns said that he was going to tell you about it when he got back. Did he?

"A. Yes.

"Q. What was it?

"A. He said that there were rumors of an impending reorganization in the management of EMI.

"Q. I show you a document from the Hazeltine files, DXBUD 490, 491, 492 and 493, marked for identification here as Defendant Dodds Exhibit 93, under the letterhead of General Electric Company Limited, under the date of the 26th of September, 1956, addressed to you from 'Arthur'. I ask you if you received that letter?

265 "A. I did.

"Q. In this letter Mr. Cornock states:

'The only other general point that I may mention, though it does not directly affect these suggestions, is that it looks as though pooling and like agreements which regulate the freedom of a company to grant licenses under its British patents, may need to be registered under the Restrictive Trade Practices Act, 1956, which has recently come into force.'

"Can you tell us whether or not you did have to register the licenses under that Act?

"A. I don't have any information on that at all.

"Q. I show you a document produced from the Hazeltine files, DXBUD 498, 499, 500 and 501, identified here as Defendant Dodds Exhibit 94 for identification which purports to be 'Suggested Future Hazeltine-GEC Arrangements,' dated September 26,
266 1956. Can you tell us if you know who prepared that document?

"A. I don't recall. I did not.

"Q. Would you look at the handwriting with respect to the marginal notes and tell us if you can identify any of that?

"A. The marginal notes are in my handwriting.

"Q. I show you a document from the Hazeltine files, DXBUD 487 and 488, identified here as Defendant Dodds Exhibit 95, this being a copy of a letter under date of October 3, 1956, sent to A. F. Cornock of General Electric Company Limited, apparently written by you. I ask you whether you wrote and sent that letter?

"A. I did.

267 "Q. I call your attention to the third paragraph on page 2 where you say:

"'We are somewhat concerned with the provisions in Clause (b. 2) limiting GEC's right to grant licenses under its patents upon the consent of Hazeltine. We are apprehensive that this would be incompatible with our Antitrust Laws. I would suggest rephrasing this clause to provide for an exclusive right to Hazeltine to grant non-exclusive licenses with respect to GEC patents relating to items (4) and (5) of the Field, subject to the right of GEC to grant licenses as a part of arrangements with third parties of the types specified. Of course the parties, by independent agreement, can always permit GEC to grant other licenses and it might be that, in this respect GEC would have

to rely on the good faith of Hazeltine in not unreasonably refusing such permission.'

"Was that change made pursuant to your suggestion?

"A. I don't believe I can answer that question
268 directly. It was not a change made. There was not any agreement. This was all correspondence relative to a possible arrangement which I believe was never completed.

"Q. There was a draft apparently proposed which you were commenting on?

"A. That is right.

"Q. You don't think it was ever executed?

"A. I don't think there ever was an agreement of that nature executed.

"Q. In any event, you thought that something that was happening over in England might be incompatible with the American anti-trust laws; is that right?

"Q. Whose opinion was it, then?

"A. The opinion expressed in the letter is mine.

"Q. you were talking about patents granted over in England, were you not?

"A. I would have to see the letter.

"Q. Look at it.

"A. I don't have any recollection independent of
269 what is in the document itself.

"Q. You can't tell us by looking at that document that you were talking about patents in England?

"A. No, I cannot. I cannot because the draft agreement dealt with the General Electric patents in England and in the United States.

"Q. You don't know whether you were talking about foreign patents or United States patents? You can't tell from looking at that letter?

"A. I don't know that I can tell by reading the

entire letter. I can't tell by reading that paragraph.

"Q. Look at the whole letter and see if you can tell us.

"A. I cannot tell from the letter whether the reference there is to United States patents or to British patents.

"Q. I show you a document produced from the Hazeltine files, DXBUD 443 and 444, marked for identification here as Defendant Dodds Exhibit 96,
270 purporting to be a letter to you on the subject of broadcast and television licensing pool under date of September 25, 1957, from 'Arthur'. I ask you whether or not you received that letter.

"A. I did.

"Q. And in this letter Arthur Cornock in General Electric said:

"'We should begin to have a fair picture of the Trade reactions in about two months' time, and I will try to let you know as soon as we have a Pool meeting which gives us a preliminary idea of how the picture is shaping.'

"Did he write you and tell you how the thing was shaping up?

"A. I don't recall. If he did, the correspondence would appear in the files and would be available for inspection.

"Q. Do you recall that RCA was objecting to any restriction in the licenses of the pool on imports?

"A. At what time?

"Q. At any time.

"A. I don't recall any knowledge of that at any
271 time.

"Q. I will show you a document which is marked for identification as Defendant Dodds Exhibit 97, which purports to be a memorandum from Mayer to

Shackleford in New York on the subject of EMI licensing.

"This is produced from RCA's files.

"My point in showing this to you is to read something to you and I wanted to hear your comment on it. In this memorandum Mayer writes:

" 'Another aspect of this matter is the question of imports raised by Article II, Section 2(e) of the draft sub-licensing agreement which states:

" 'That EMI shall not restrict any license (by written agreement or otherwise) in regard to exports or imports to or from any country.'

" 'Shoenberg said that they could not agree to license foreign manufacturers to import into Great Britain, and he says this on the basis of his claim for exclusivity. In their view it would mean the im-
272 mediate collapse of the whole licensing pool and of the revenue derived from it. They have always had to refuse to license imports from anywhere. British manufacturers are extremely jealous of importers, and although the Patent Act does not specifically support this attitude, there is no doubt that the old idea of patents giving a monopoly continues today and confirms a basis for a general licensing policy in Britain of using patents to build up trade and to keep out cut-throat competition from foreign countries where prices may be cheaper.'

"Have you ever heard anybody in the pool express that thought?

"A. No."

273 Mr. Dodds: Your Honor, same objection. This is for a document not from the Hazeltine files as to which the witness testified he had no knowledge.

The Court: And you also said that you had never heard of this.

Mr. Dobbs: That is right.

The Court: All right.

Mr. McConnell: (Reading.)

"Q. Did anybody in the pool for General Electric ever tell you the reason for the provision in their license precluding import?

"A. No.

"Q. You didn't ask anybody, I take it?

"A. I have to correct that. Yes, they did, within the last year.

"Q. Who told you that?

"A. Nobody told me directly but I received word indirectly from, I believe, a Mr. Chapel of General Electric Company.

"Q. Nobody in the pool directly communicated with you on the subject?

"A. That is right.

274 "Q. I show you a document which has been produced in response to our interrogatories, Exhibit O, which purports to be an Agreement between Australian Radio Technical Services and Patents Company—

The Court: Are we starting with Australia now?

Mr. McConnell: Yes.

The Court: Maybe we can move down south tomorrow. We have done pretty well today. It is about time to—

Mr. McConnell: Thank you very much, your Honor.

The Court: We have been over in England and in Canada and we will go to Australia tomorrow.

Mr. McConnell: Thank you.

(Thereupon, Court adjourned until 10:00 o'clock A.M. Tuesday, February 18, 1964.)

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

Before Honorable Richard B. Austin
on Tuesday, February 18, 1964
at 10:00 o'clock A.M.

Appearances:
Mr. Dodds,
Mr. Diggins,
Mr. Ruestow.
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

Trial resumed pursuant to adjournment.

276 The Clerk: Case on trial.

The Court: You may proceed, Mr. McConnell.

Mr. McConnell: If it please the Court, I was just starting on—

The Court: You were just going to Australia.

Mr. McConnell: Australia. I am starting at page 226 of the deposition.

> "Q. I show you a document which has been produced in response to our interrogatories, Exhibit O, which purports to be an agreement between Australian Radio Technical Services and Patents Co. Limited, and Neutrodyne Proprietary, Limited dated April 12, 1934. It is identified here as Defendant Dodds Exhibit 98."

And it is received here in evidence pursuant to our stipulation as Defendant's Exhibit 182.

> "I ask you if you have even seen the original of that document?"

The witness asked me a question which is not relevant. Then he said:

"Yes. This is a correct copy of the original agreement.

277 "Q. I show you a document produced from the Hazeltine files, DXBUD 425A to and including 425S, purporting to be an agreement between Australian Radio Technical Services and Patents Company, Limited, and Neutrodyne Proprietary Limited marked here for identification as Defendant Dodds Exhibit 99."

And it is marked in evidence here as Defendant's Exhibit 184.

"I ask you whether or not you have seen a copy of an original of that document?

"A. I don't have any present recollection of having seen the original of this document but that is a copy of the document so identified in the Hazeltine files.

"Q. What is the Neutrodyne Proprietary Limited Company? What is its business?

"A. It is in the business of licensing under the Australian Patents originating from Hazeltine inventions.

"Q. Was it through the Neutrodyne Company that
278 Hazeltine Patents got in to the ARTS pool?

"A. It is my information that Hazeltine Patents are not in the ARTS pool."

Then he said:

"I am mistaken. I believe the answer to your question is yes.

279 "Q. I show you a document produced from the Hazeltine files DXB 56A to and including DXB 56J, marked here as Defendant Dodds Exhibit 100 for identification. This, apparently, is an analysis of the New Zealand Pool Agreement under date of April 5, 1939.

Your name appears at the bottom. Will you tell us whether or not you prepared that analysis, and if so, from what document?

"A. This is an outline which I prepared and it appears to be prepared from the copy of the agreement between ARTS and Neutrodyne dated November 28, 1938, which is attached to the outline.

"Q. I show you a document produced from the Hazeltine files, DXB 55A to and including DXB 55I, also having on the front page of it the date of April 5, 1939, an analysis of the Australian Pool Agreement, with your name under it; this is marked for identification here as Defendant Dodds Exhibit 101. I ask you if you made that analysis and, if so, from what document?

280 "A. Yes. This is an outline which I made and apparently it is made from an agreement between ARTS and Neutrodyne dated November 28, 1938, a copy of which is attached to the outline.

281 "Q. Who owns the stock of Neutrodyne Proprietary, Limited?

"A. It is owned 70 per cent by Hazeltine Corporation and 30 per cent by Electronic Industries, Limited.

"Q. Is Electronic Industries, Limited an Australian company?

"A. It is.

"Q. I show you a document marked DXBUD 1850, from the Hazeltine files, marked here as Defendant Dodds Exhibit 102; this purports to be a memorandum on the subject of Neutrodyne Proprietary, Limited, under date of January 2, 1947. Can you identify that as coming out of the files of Hazeltine?

"A. I can.

"Q. I show you a document, DXBUD 1851, marked

here as Defendant Dodds Exhibit 103, this being a memorandum under date of February 24, 1947, and I ask you if you can identify that document as coming out of the files of the Hazeltine Company?

"A. Yes, I can.

"Q. I show you a document, DXBUD 1847, 1848
282 and 1849, produced from the Hazeltine Corporation files—"

Which is marked here as Defendant's Exhibit 208.

"—This purports to be a letter to the Hazeltine Corporation, attention of J. D. Grayson, under date of February 2, 1948, on the letterhead of Neutrodyne Proprietary, Limited. I ask you if you can identify that as coming from the files of the Hazeltine Company?

"A. I can and do.

"Q. I show you a document, DXBUD 1826 and 1827, consisting of four attached papers, marked for identification here as Defendant Dodds Exhibit 105, which purports to be comparative income and expense statements of Neutrodyne Proprietary, Limited. Can you identify that as coming from the files of the Hazeltine Company?

"A. Yes, I can and do.

"Q. I show you a document which comes from the files of the Hazeltine Company DXBUD 2035, which is
283 identified here as Defendant Dodds Exhibit 106."

It is in evidence here as Defendant's Exhibit 188.

"This purports to be a license agreement between ARTS and a licensee which is a form agreement, apparently, and I ask you if you have ever seen that document before.

"A. Yes. I have seen that document before.

"Q. Do you know from what source Hazeltine received it?

"A. I have no present recollection.

"Q. Did it come from ARTS?

"A. I don't have any direct knowledge to that effect.

"Q. Where do you think it came from?

"A. I think it came from ARTS.

"Excuse me: I was not thinking. I am sure that it did not come from ARTS. I think it came from Electronic Industries when it did.

"Q. I call your attention to the provision in Paragraph 4 on Page 3 of this form agreement:

284 " 'The licensee agrees with the Grantor as follows:

" '(a) Not without the previous written consent of the Grantor to export or sell for export or knowingly permit to be exported any broadcast receiving apparatus or radiogramophone.

" '(b) Not without the previous written consent of the Grantor to sell, let on hire or put into use in the territory for which this license is granted any broadcast receiving apparatus or radiogramophones which have not been manufactured in the territory for which this License is granted.'

"Were you familiar with those provisions in this license?

"A. No.

"Q. When did you first learn of it?

"A. During the course of this litigation.

"Q. You have never read that before?

"A. I have no recollection of ever having read that before.

"Q. Is that the best that you can tell us, that you
285 don't have a recollection of it?

"A. I believe that is best I can tell you."

286 Mr. Dodds: Same objection, your Honor.

The Court: In regard to this document, the only

value of this testimony is that you at least now are aware of it.

Mr. Dodds: Right.

The Court: All right.

Mr. McConnell: Well, it came out of their files, your Honor.

The Court: It came out of their files, but knowledge of it on the date that it is dated cannot be attributed to him in view of the testimony.

Mr. McConnell: (Reading.)

"Q. I show you a document, DXBUD 2033 marked for identification as Defendant Dodds Exhibit 107—"

That is marked in evidence here as Defendant's Exhibit 190.

"—I ask you if this document has been produced from the files of the Hazeltine Company and, if so, from what source was it received, if you know?

287 "A. This has been reproduced from the files of the Hazeltine Company. I do not know what the source of it is or was.

"Q. I show you a document marked DXBUD 2034—"

Mr. Dodds: Excuse me. Just to avoid the continuing interruption, can we have a standing ruling that with respect to these documents of which the witness testified that he had no knowledge or familiarity it would be subject to the same ruling without having to object to each question.

The Court: Well, in regard to your knowledge of them. There is another aspect of them and that is their relationship to Hazeltine Corporation, if they came from Hazeltine's files.

Mr. Dodds: That is correct, your Honor, only except that there isn't any proof, at least up to this point, as to

when they came or what the date was or how they arrived there. These could be, conceivably, documents that were received fifteen years later.

The Court: All right. The standing objection may stand.

288 Mr. McConnell: (Reading.)

"Q. I show you a document marked DXBUD 2034 marked for identification as Defendant Dodds Exhibit 108, entitled 'License Number 3 between Australian Radio Technical Services and Patents Company Proprietary Limited and a blank Licensee.' I ask you whether or not you have seen the document before."

And that has been marked in evidence here as Defendant's Exhibit 189.

"A. I have seen it before in connection with collecting documents for this discovery proceeding.

"Q. Prior to that time you had not seen it?

"A. I don't have any recollection of having seen it before.

"Q. What file did you take it out of when you collected it for this proceeding?

"A. I believe that there is a file in the Hazeltine office entitled 'Neutrodyne Proprietary Limited,' and
289 I believe that that came from the Neutrodyne file.

"Q. You never had occasion to consult that file before?

"A. Not files for years as early as that. The files are broken down by periods.

"Q. I show you a document consisting of three pages, DXBUD 54, 54A, and 54B, marked here for identification as Defendant Dodds Exhibit 109, this being an analysis under date of April 5, 1939, having your initials, and I ask you if you prepared the analysis and if so from what documents?"

And that document is marked in evidence here as Defendant's Exhibit 197.

"A. Well, this is certainly an outline which I prepared in 1939, some twenty-three years ago. I have no present recollection either of the outline or the agreement beyond what is set forth in the paper itself.

290 "Q. I call your attention to the second page of that document, 4(b) in which you say 'Licensee agrees not to import without consent of Grantor.'

"Did you make that comment?

"A. I made whatever comment is on that document.

"Q. Can't you tell us whether you made that comment or not, looking at the document?

"A. Mr. McConnell, I think the document speaks for itself. I don't think it adds anything to it that when you say, did I say say.

"Q. I don't care what you think. I am trying to make a record in a lawsuit. I am asking you a perfectly plain, simple, ordinary question. I asked you whether or not that comment is yours.

"A. I don't know whether you are reading verbatim or not.

"Q. Look at it.

"A. I made the comment. You identify the section in that and I will say that I made the comment there identified."

291 And then turning to Page 235:

"Q. I show you a document marked DXBUD 2032 marked for identification as Defendant Dodds Exhibit 110—"

which is in evidence here, marked in evidence here, as Defendant's Exhibit 191.

"—and I ask you whether or not this document comes out of the Hazeltine files and, if so, from what source it was received.

"A. This is a copy of a document from the Hazeltine files. I have no present recollection where it came from.

"Q. I show you a document produced from the Hazeltine files, DXBUD 406, marked for identification as Defendant Dodds Exhibit 111."

It is marked in evidence here as Defendant's Exhibit 192.

"—and I ask you if you can tell me from what source that document came.

"A. This is a copy of a document from Hazeltine files. I do not recall where the original document came from.

"Q. I show you a document which was produced
292 here as Exhibit R in response to our interrogatories, marked for identification as Defendant Dodds Exhibit 112. I ask you if you can tell us from what source that was received by Hazeltine.

"A. I do not have any present recollection of what source this document came from.

"Q. I show you a document which has been produced here by Hazeltine as Exhibit S in response to our interrogatories, marked for identification as Defendant Dodds Exhibit 113."

It is marked here in evidence as Defendant's Exhibit 194.

"—and I ask you if you can tell us from what source that document was received by Hazeltine.

"A. I have no present recollection of the source from which that document was received.

"Q. I show you a document which has been produced from the Hazeltine files, DXBUD 1602, 1603 and 1604. This is marked for identification as Defendant
293 Dodds Exhibit 117."

It is marked in evidence here as Defendant's Exhibit 199.

"This purports to be a letter to Mr. Binns from Mr. A. G. Warner, with a memorandum attached. Have you ever seen this document before?

"A. To the best of my recollection I have not seen this document before.

"Q. I show you a document designated DXBUD 424 and 423, marked for identification as Defendant Dodds Exhibit 118. This purports to be a letter to

Mr. Warner of Neutrodyne under date of July 6, 1950, from Mr. Hook, and a reply letter from Mr. Warner. I ask you if you have ever seen these documents before.

"A. To the best of my recollection I have not seen those documents before. When I say 'before,' I mean before this discovery proceeding.

"Q. I show you a document designated as DXBUD 2780 and 2781, marked for identification as Defendant Dodds Exhibit 119."

294 It is marked in evidence here as Defendant's Exhibit 200.

"This is a letter to Mr. Binns from Mr. Warner. I ask you if you ever saw that document before.

"A. Yes, I have seen that document before.

"Q. I call your attention to this statement and ask you if you knew about it at or about the time of this letter:

"'Our general proposals are that we shall issue only one form of license which will be a joint television and radio receiver license, and must be taken in toto, and taken so as to operate from the first January 1951. The effect of this will be that every person desiring a television license within the five-year period will have to pay upon his radio receivers as from the first January 1951.'

"A. I knew of that as of about the date of the receipt of this letter.

295 "Q. I show you a document marked for identification as DXBUD 422A and 422B, marked here as Defendant Dodds Exhibit 120 for identification."

It is marked here in evidence as Defendant's Exhibit 202.

"And I ask if you have ever seen that document before.

"A. Yes, I have seen it.

"Q. I show you a document, DXBUD 420, produced from the Hazeltine files and marked here as Defendant Dodds Exhibit 121 for identification, and I ask you if you have ever seen that document before.

"A. I do not believe I have seen that document before.

"Q. I show you a document marked for identifica-

tion as Defendant Dodds Exhibit 122, produced from the Hazeltine files, DXBUD 410D and 410E, and I ask if you have ever seen that document before.

"'A. Yes, I have seen this document before.

"Q. I show you a document, DXBUD 414-A, 414-B,
296 and 414-C, which purports to be a letter from Electronic Industries, Limited to you, identified here as Defendant Dodds Exhibit 123 for identification,"

and it is introduced or received in evidence pursuant to stipulation as Defendant's Exhibit 203.

"—a letter dated April 10, 1958, and I ask you if you have ever seen that letter.

"A. Yes, I have seen that letter.

"Q. On the second page of this letter there is the following statement:

"'AWA agreed to a smaller share and to contribute to share of Parker because of weakness via RCA anti-trust embarrassment.'

"Who is 'AWA'?

"A. Amalgamated Wireless (Asia) Limited.

297 "Q. Do you know what the embarrassment was?

"A. I have no direct knowledge whatsoever.

"Q. Indirectly, what do you know about it?

"A. I believe there has already been testimony about the government antitrust action against RCA a few years back.

"Q. I show you a document marked DXBUD 410C under date of October 2, 1958, identified here as Defendant Dodds Exhibit 124 for identification. I ask you if you have ever seen that document?

"A. Yes. I have seen this letter.

"Q. I show you a document marked DXBUD 413, identified here as Defendant Dodds Exhibit 125 for identification, which purports to be a letter from you to Arthur G. Warner under date of October 22, 1958. I ask you if you wrote that letter?

"A. Yes. I wrote that letter.

"Q. I show you a document, DXBUD 411, under date of January 15, 1959, marked for identification as
298 Defendant Dodds Exhibit 126, which purports to be a

letter from Warner to you, and I ask you if you received that letter?

"A. Yes, I received that letter.

"Q. In this letter he states:

"'No formal agreement between ourselves can be enforced in any Court of Law, so that after we have dotted the i's and crossed the t's and argued about the clauses, they will still be unenforceable. In fact, we can only hang together with good will and good intentions, a point incidentally which is often missed by American companies dealing with Australian organizations.

"'In addition, a formal agreement is subject to examination by Governmtnt departments, taxation and otherwise, and it is difficult to avoid the commitments of the written agreement, whereas if there is no formal agreement one is able to argue the arrangements and circumstances arise from time to time to suit our mutual interest as opposed to that of Government interests.'

299 "What was there about your agreements that made them unenforceable?

"A. I don't know to what he had reference.

"Q. Did you agree with him that the best way to have an agreement was to have it so flexible that you could take any position you thought suited your mutual interest?

"A. I didn't agree or disagree with him.

"Q. You just didn't answer him?

"A. I didn't answer him.

"Q. I show you a letter, DXBUD 409, marked for identification as Defendant's Exhibit 127,"

marked in evidence here as Defendant's Exhibit 206,

"dated January 26, 1959, written by you to Sir Arthur G. Warner. I ask you if you wrote that letter?

"A. Well, I have to correct my testimony. Apparently I did answer that letter. I had forgotten it. I did write the letter, Exhibit 127.

300 "Q. I show you a document DXBUD 410A—apparently the second page is missing—marked here as

Defendant Dodds Exhibit 128 for identification, a letter to you. I have no way of knowing who wrote it. I ask you if you received the first page?

"A. I received the document, Exhibit 128.

"Q. I show you a document, DXBUD 407, marked for identification as Defendant Dodds Exhibit 129."

It is marked in evidence here as Defendant's Exhibit 207.

"This purports to be a letter from Arthur Warner to you under date of February 2, 1959. I ask you if you received that letter?

"A. Yes. I received that letter.

"Q. In the letter he states:

" 'I understand the position, and if, as and when we want a formal agreement in the light of some Government matter, then I think we can frame an agreement to suit our mutual interests as opposed to those of the Government.

301 "What did you understand that he was proposing?

"A. I don't know that anything definitely was proposed.

"Q. What, generally, was he trying to accomplish by leaving it open to oppose the Government with something?

"A. Mr. Warner is an individual who, perhaps, is not an anarchist but he seriously abhors Government routine, red tape and conducts his business accordingly.

"Q. I show you a document, DXBUD 100, marked for identification as Defendant Dodds Exhibit 130. This purports to be a letter from you to Mr. Hultman of AGA-Baltic on the subject of Scandinavian patent pools, and I ask you if you wrote and sent that letter?

"A. Yes, I wrote and sent that letter.

"Q. In that letter you state:

" 'We believe that the decision of RCA relative to its participation in these pools in the Scandinavian

countries is unfortunate and legally unsound, but ap-
302 parently they are firmly committed to it.'

"What was their decision?

"A. I believe it was their decision not to participate in the pools in question.

"Q. Was that because they thought that the pools were illegal?

"A. I don't know RCA's motives.

"Q. In your next sentence you say:

"'Recently I checked with Dr. Shackleford, their foreign license administrator, as to the basis of their conclusions and as to their plans for exploiting their patents in the several countries. He said that he had had only a brief time with Mr. Sarnoff since his return, but concerned their position as Mr. Sarnoff explained it to you.'

"What was the position of Mr. Sarnoff explained to Mr. Hultman?

"A. I do not know.

"Q. You didn't know at the time you wrote this letter?

"A. I don't have any recollection of it.

303 "Q. Your next paragraph states:

> 'Doctor Shackleford said that, while he was not in agreement, their general counsel was of the firm conviction that participation in such pools would constitute violation of our Anti-trust laws.'

"Did he tell you that?

"A. I don't have any recollection independent of what is written in the letter.

"Q. This letter was written contemporaneously with your talk with Doctor Shackleford, was it not?

"A. Yes. It was.

"Q. Then you say:

'However, their attitude is due in part to the diversity of their operations in the radio field including manufacturing, patent licensing, broadcasting, and commercial communication, and to the fact that they have been subjected to repeated investigations by the Congressional Committees and the Department of Justice for suspected violations of the Anti-trust laws.'

304

"Where did you get that information?

"A. I don't believe there was any specific source. I think that was just a matter of common knowlege accumulated over a period of years.

"Q. That is your inference, is it not?

"A. I don't think it is an inference. I think it is a question of my statement of facts as I recalled them at that time.

"Q. Can you tell us where you got your facts, specifically, and not just generally?

"A. I cannot tell you where I goth them specifically. I get them from one hundred places. You remember it in the papers, the trade magazines, and you talk to people in the industry.

"Q. Well, you say as a statement of fact that they developed a rather strong phobia with respect to antitrust matters. Did somebody tell you that?

"A. That was my own conclusion.

305 "Q. Evidently you had not developed any strong phobia with respect to antitrust matters at that time, had you?

"A. I don't believe I did then and I don't believe I have now. I try to avoid phobias.

"Q. You don't apparently try to avoid trouble with the antitrust laws, do you?

"A. That's your opinion. You are entitled to it.

"Q. How much of the statement did you get from Doctor Shackleford, or can you tell us?

"A. I have not the slightest recollection, except that the portion where I effectively quote or state the substance of our conversation, that I will assume came from Doctor Shackleford.

"Q. Do you know who their general counsel was that had the firm conviction that participation in such pools would constitute violation of our antitrust laws?

"A. I don't recall who the general counsel was back that far in 1946.

306 "Q. Did you know it was Mr. Cahill's firm here in New York?

"A. I did not refer to Mr. Cahill's firm. I was referring to RCA's internal personnel.

"Q. I quote:

'Doctor Shackleford said that, while he was not in agreement, their general counsel . . .'

"Their general counsel were outside lawyers, correct?

"A. As I said, I was not using the term in that sense. I believe that they have had people in there—officers who have carried the title of general counsel.

"Q. You were not quoting from Doctor Shackleford in this characterization of general counsel, were you?

"A. I was not quoting Doctor Shackleford in anything.

"Q. You say here Doctor Shackleford said—

"A. I said in substance and I didn't call him.

307 "Q. ' . . . while he was not in agreement, their general counsel . . .' Did he tell you that their general counsel—

"A. I don't remember the exact words that were

used. What is said there is much more accurate than anything I could say now.

308 "Q. I believe that that concludes this deposition except that there are two sets of documents that we have not received—the A.8 pool agreement—

"A. To the best of our information we have no copy of the A.8 pool agreement in our files.

"Q. Have you a copy of their output license?

"A. The A.8?

"Q. Yes.

"A. I have not checked that specifically because that was not asked for."

On page 250, the witness said:

"If I may, I would like to modify one answer or a couple of answers I gave this morning. I think I did not speak too accurately.

"Q. You said you wanted to amend an answer or two. Please do.

"A. I believe I was asked whether or not the General Electric Company represented Hazeltine in making its patents available to the British pool. I think I
309 agreed to that statement, but the General Electric Company has not been a representative of Hazeltine in the ordinary sense of the word. It has acquired certain rights under the agreements between the two companies which, I believe, have been marked for identification, and that is the limit of their rights with respect to the Hazeltine patents.

"Q. I take it the documents then will speak for themselves as to what the rights are?

"A. Correct."

That concludes the reading of the deposition, your Honor.

Mr. Dodds: Just one minor comment. I think the portion of the deposition was skipped where it explained why

the witness had no knowledge of these early foreign agreements. Because in the early years, those were handled exclusively by Mr. Binns, and the witness did not have any contact with or familiarity with those foreign agreements until a considerably later period of years. That was
310 why the witness repeatedly said, "I have never seen this document before," or "I have no knowledge of it."

The Court: All right.

Mr. McConnell: At this time, your Honor, I want to read into evidence answers to certain interrogatories which we have asked here in these proceedings pursuant to the interrogatory rules of this Court.

The Court: Now that you are through with that, will you tell me what BUD meant?

Mr. McConnell: That's their document number. That's the way they marked their documents. I don't know why.

Mr. Dodds: What is that?

The Court: I wondered what BUD meant?

Mr. Dodds: Oh, BUD, excuse me. That was the defendant's mark. That was the deposition of Mr. Vern Budd, secretary of the Hazeltine Corporation. I think that was the abbreviation they adopted in marking this Exhibit. And they marked DXBUD as being the deposition exhibit of Mr. Vern Budd.

The Court: I restrained my curiosity until it was all over, but now I wanted to know.

311 Mr. McConnell: All right. Your Honor, I thought that we both marked them together and agreed on that designation, but I may be wrong.

Interrogatory No. 2:

"Does plaintiff"—That's Hazeltine "—have a standard form of agreement extending licenses under its domestic patents for the manufacture, use and/or sale of any of the following classes of apparatus:

"(a) Radio receivers,

"(b) Monochrome television receivers;

"(c) Color television receivers."

The Court: That is the interrogatory?

Mr. McConnell: That's the interrogatory.

"Answer: Plaintiff has a standard form af agreement extending licenses of the type inquired about, a copy of which is attached as Exhibit B."

And that is marked in evidence here as Defendant's Exhibit 2. Have you got a copy of that agreement?

This is in evidence, your Honor, as Exhibit 2 pursuant to our stipulation, which stipulated all documents produced from the Hazeltine files can be received in evi-
312 dence here. And, of course, this comes in under another rule of this Court, and that is, answers to interrogatories are evidence in the case.

Mr. Dodds: Your Honor, there is a qualification on that stipulation. It is received in evidence subject to an objection as to relevance.

The Court: All right.

Mr. McConnell: Well, it is your position that this standard license agreement is irrelevant?

Mr. Dodds: No.

The Court: He was just objecting to your blanket statement that everything that you have in your possession is admissible without qualification. That was his only objection, not this particular document.

Mr. McConnell: This license agreement is a standard license—by standard license it applies to the licensees generally of these patents, and the royalties—

The Court: Are we back in America, Mr. McConnell?

Mr. McConnell: Yes, we are back in America at the moment.

313 The Court: This is the American license.

Mr. McConnell: The domestic license agreement.

The Court: All right.

Mr. McConnell: It provides as to royalties. This goes to a point that your Honor talked about in some of the questioning yesterday. It provides as to royalties:

> "Licensee agrees to pay to licensor upon each complete apparatus of any of the types identified in Article II, Section 2, sold or leased by the licensee during the continuance of this license, royalties as follows: Upon apparatus of any of the types identified in Subsections (a) and (e), a royalty of .45 per cent of licensee's net selling price of said complete apparatus."

Now, in Article II, Section 2, the apparatus is described as follows, and I am quoting from Page 3 of the license:

> "Section 2: The apparatus for which the said license is granted is, as follows: The license in each
314 case being limited to apparatus designed and intended primarily for use in homes, use for educational purposes, and private non-commercial use;
>
> "(a) Complete radio broadcast receivers of sound,
>
> "(b) Complete broadcast receivers of pictures (television),
>
> "(c) Chassis of radio broadcast receivers of sound,
>
> "(d) Chassis of radio broadcast receivers of pictures (television),
>
> "(e) Complete carrier current receivers of sound,
>
> "(f) Complete carrier current receivers of pictures,
>
> "(g) Combinations of the apparatus specified in (a) and (b) of this section, and
>
> "(h) Combinations of the apparatus specified in (c) and (d) of this section."

And this license provides for the payment of those royalties whether or not the apparatus there described is covered by any of the Hazeltine patents.

315 The next interrogatory I want to turn to is Interrogatory 12.

"State year by year for each calendar year from and including 1951 to date:

"(a) The number of United States patents subject to licensing by plaintiff for the manufacture, use and/or sale of radio and/or television receivers,

"(b) The number of United States patent applications filed during the year by plaintiff,

"(c) The number of patents owned by plaintiff which were issued during the year."

"Answer: There follows the total number of patents and patent applications owned or subject to licensing by Plaintiff and those filed by Plaintiff, as requested, but no attempt has been made to segregate those patents useful in the manufacture, use and sale of radio and television receivers for two reasons: (1) Under the Hazeltine form of license agreement, Exhibit B attached hereto, the licensee has the pri-
316 ilege of using any one or all, or none of the licensed patents; and (2) there have been a wide range of designs of radio and television receivers during the period 1951 through 1960 and Plaintiff does not have information thereon to enable it to make such a segregation:

And then there follows a designation of the number of patents. Up to 1960, it was five hundred ten and the number of U. S. patent applications up to 1960 was forty-eight. And in, (c) The number of U. S. patents owned by the plaintiff issued during each calendar year, for 1960, was forty-five.

The next interrogatory I want to read is 13.

"With respect to the patent in suit, state whether or not foreign patents covering the invention have issued and list all of the following as to each such foreign patent that has issued:

317 "(a) Country where issued,

"(b) Patent number and title,

"(c) Record owner or owners."

"Answer: There are listed below the foreign patents in question."

"Australia; Patent No. 139,522"; the record owner is stated to be "Neutrodyne Proprietary, Ltd."

"Canada," a patent number—equivalent patent number covering the same invention of the patent here in suit, 487,448, and the record owner is the Hazeltine Corporation—

Mr. Dodds: Your Honor, just to keep the record straight, I think the equivalent is Mr. McConnell's interpolation. I don't believe the interrogatory says they are equivalent. We found out yesterday that many of these foreign patents are not at all equivalent. They are counterparts. The laws of foreign countries are quite different.

The Court: Have we run into a semantic thing, have we?

318 Mr. Dodds: I should think Mr. O'Connell interpolated—

The Court: All right. Counterpart you will accept, equivalent you won't, apparently.

319 Mr. McConnell: Well, I am willing to stand on his answer in the interrogatory. We asked him a very clear question: List the patents in the foreign countries which were the equivalent—

Mr. Dodds: I don't think either the interrogatory or the answer uses the word "equivalent." That's what I am objecting to.

Mr. McConnell: All right. Here is what the interrogatory states:

"With respect to the patent in suit, state whether or not foreign patents covering the invention have issued and list all the following as to each such foreign patent that has issued:

"country where issued,

"patent number and title,

"record owner or owners."

Now, I got down to Canada, and there you said the patent covering this invention is 487,448, and it is owned by the Hazeltine Corporation.

I want to call your Honor's attention to counsel's statement yesterday that they didn't own these patents in
320 foreign countries. He said they sold them.

Mr. Dodds: Point out in the record where I said that, Mr. McConnell. I never said that in my life, and it is not true.

Mr. McConnell: I will point it out.

Mr. Dodds: Please do.

The Court: I am not concerned with what he said, except what he said under oath. Are you talking about what he said in his deposition or—

Mr. McConnell: What he told your Honor yesterday.

The Court: Well, as I told both of you counsel, and as you both know, anything that you say that is not under oath is not considered as evidence by me, so let's go on.

Mr. McConnell: (Reading.)

"Great Britain: Patent number and title, 623,431," and the record owner is "Hazeltine Corporation."

Now, Interrogatory No. 14:

"List and identify all persons, companies and corporations wihch now have or have had the right to grant
321 licenses under each of said foreign patents, and fully describe such right.

"(a) Fully describe the terms and conditions of licenses issued by said companies or individuals or supply a copy of the form of license or licenses used.

"(b) Have said companies or individuals granted licenses under patents owned or controlled by companies other than plaintiff or subsidiaries of plaintiff?

"(c) Fully describe the licenses referred to in (b) or supply copies of same."

In answer to that, they list "Canada," and the company having the licensing rights as the "Canadian Radio Patents, Limited." And they state:

"Terms and conditions of licenses granted, not known."

And "Licenses granted under patents other than those of plaintiff and affiliates, not known."

"Great Britain:" They state that the General

322 Electric Company, Limited, is the person having the licensing rights. And under the terms and conditions, "Note 2 below." And under the license terms, "Note 2 below."

"Australia and New Zealand." They list the company having the licensing rights as Neutrodyne Proprietary, Ltd., and they refer in the following columns as "Note 3 below."

"Note 2: The General Electric Company, Limited, has included the Hazeltine British patents as well as its own British patents in several of the so-called British Radio and Television Patent Pools. There can be found copies of only the A.6, A.7 and A.8 Pool Agreements and Supplements which are attached as Exhibits 52, 48 and 50."

What are the corresponding—

Mr. Curtis: I think they are marked there.

Mr. McConnell: They are now marked in evidence, your Honor, as Defendant's Exhibits 52, 48 and 50.

"The British pools have, in turn, granted licenses to
323 the British Radio and Television manufacturers. There can be found only the A.5, A.6 (and supplement), A.7S and A.7T (and second edition of each) Pool Licenses, copies of which are attached as Exhibits I, J, K, L, M and N,"

which are defendant's exhibits here, now, as 59 and 64, 65, 66, 68, 69, 67, plus A.8S and A.8T, which are marked in evidence here as Defendant's Exhibits 70 and 71.

324 "Note 3: Neutrodyne Proprietary, Ltd., has from time to time included Australian and New Zealand patents of Hazeltine origin in the Australian and New Zealand Patent Pools (Australian Radio Technical Services—ARTS). There can be found only a copy of the Australian Radio Technical Services & Patents Co. Ltd. and Neutrodyne Proprietary, Ltd.—dated April 12, 1934, a copy of which is attached as Exhibit O."

And that is marked in evidence here as Defendant's Exhibit 182.

"There can be found only copies of the following licenses issued by ARTS to Australian radio and television manufacturers, copies of which are attached as Exhibits P, Q, R and S:

"Australian Patent License Number 1 issued 1934 (Exhibit P),"

marked in evidence here as Defendant's Exhibit 188.

"Australian Patent License Number 5 issued 1951 (Exhibit Q),"

marked in evidence here as Defendant's Exhibit 192.

325 "Australian Patent License Number 6 issued in 1953 (Exhibit R),"

in evidence here as 193.

"Australian Patent License Number 6B issued 1953 (Exhibit S),"

marked in evidence here as Defendant's Exhibit 194.

326 The next interrogatory I wish to read is 15:

"List and identify all contracts, assignment or other documents by which the right to grant licenses referred to in Interrogatory No. 14 was acquired and all agreements, arrangements and understandings relevant thereto. (If any of said agreements, arrangements or understandings were oral, describe them fully.)

"Answer: With respect to Finland, Norway and Sweden, the right to grant licenses under the respective corresponding patents in those countries was granted to Svenska Aktiebolaget Gasaccumulator by an agreement dated July 25, 1946, and effective to December 31, 1950; this agreement was extended by a letter agreement dated May 26, 1950, to December 31, 1955; and further extended by a letter agreement dated December 4, 1953, to December 31, 1960."

Then they refer to Austria, Belgium, France, Hungary and Switzerland, which we are not concerned with here,

327 and which I will not read.

"With respect to Great Britain, license rights were granted to General Electric Company, Limited, by an agreement dated April 6, 1939,"

which is Defendant's Exhibit 43 and 44, here in evidence.

"—extended and modified by agreement dated July 24, 1948—"

which is Defendant's Exhibit 45.

"—and November 10, 1948,"

which is Defendant's Exhibit 45-A.

"—which were superseded by an agreement dated February 27, 1953,"

which is Defendant's Exhibit 48.

"—extending to December 31, 1957, and by a supplemental agreement dated November 14, 1957—"

which is Defendant's Exhibit 48-A.

"—extending to June 30, 1960.

"With respect to Canada, the license rights referred to were granted to Canadian Radio Patents, Limited, by an agreement dated July 2, 1943, for a term of ten
328 years renewable for a further period of ten years.

"With respect to Australia and New Zealand, the license rights referred to were granted to Neutrodyne Proprietary, Limited, by an agreement dated September 11, 1928, which is still in effect."

The next interrogatory that I wish to read is 23:

"State generally the terms and patent coverage of said licenses or, if a standard license form has been used, supply a copy of said standard form.

"Answer: The only information which can be found is a copy of a license supplied to Hazeltine Corporation by Canadian Radio Patents, Limited, on or about June 6, 1960, a copy of which is attached as Exhibit U."

Which is marked in evidence here as Defendant's Exhibit 123.

That concludes the interrogatories which I wish to present at this time.

329 I would like to call Mr. Ruestow to the stand to be examined in adverse examination under the rules of this Court.

The Court: All right.

Mr. McConnell: May he be sworn, please?

EDWARD A. RUESTOW, called as an adverse witness on behalf of the defendant herein, having been first duly sworn on oath, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Mr. Ruestow, where do you live?

A. Valley Road, RFD 1, Glenhead, New York.

The Court: And your first name, Mr. Ruestow?

The Witness: Edward A.

The Court: All right.

By Mr. McConnell:

Q. And what is your connection with any of the Hazeltine Companies?

A. I am general patent counsel of the Hazeltine Corporation, the parent corporation. I am executive vice-
330 president of the plaintiff Hazeltine Research, Inc.

Q. Are you a director of either of those companies?

A. I am a director of Hazeltine Research, Inc. as well.

Q. How long have you been connected with these companies?

A. Since April, 1954.

Q. Will you tell us what your duties are in connection with the licensing of the Hazeltine patents?

A. At the present time my responsibilities are that of a patent advisor.

Q. And what are the duties of that office?

A. The qualification of patent applications on inventions derived from all of the Hazeltine organization and advising on the license structure, the license problems of both Hazeltine Corporation and Hazeltine Research, Inc.

Q. I show you a document which has been received in evidence here pursuant to stipulation as Defendant's
331 Exhibit No. 2, which purports to be a standard license

agreement of the Hazeltine Company; will you look at that, please, and I want to ask you a question about it?

A. Very well.

Q. Did you have anything to do with drafting that document?

A. No.

Q. Do you know who did draft it?

A. No.

Q. Do you know during what period of time that standard license agreement has been used?

A. Been used, did you say?

Q. Yes.

A. Since about September, 1958.

Q. Did you have anything to do with negotiations with the Zenith Radio Corporation about seeking or soliciting or asking them to take a license under Hazeltine patents, domestic patents?

A. Yes.

Q. About when did those negotiations start?

A. In the fall of 1961.

Q. And who did you deal with at the Zenith Radio Corporation?

332 A. Mr. Crotty, Francis Crotty.

Q. That is the gentleman sitting at the counsel table here?

A. That is correct.

Q. In the last seat.

Now, in the course of those negotiations, did you tender to him that standard license agreement at any time, or proposal from your company?

A. No.

Q. You never did?

A. Not to—I have no recollection of that.

Q. Did you ever give him that copy?

A. I don't believe so. My recollection is that I did not.

Q. But you say that standard license has been used by your company with your licensees from time to time?

A. Yes.

Q. Is it still being used?

A. No.

Q. When was it discontinued?

A. Except, of course, for those that are already in
333 existence as executed agreements. We have not used this since about the time I talked with Mr. Crotty.

The Court: That was when again?

The Witness: The fall of 1961.

The Court: All right. So this was the standard agreement from the fall of '58 until the fall of '61, is that it, about? I think that that is what you—

The Witness: That is correct.

The Court: All right.

334 By Mr. McConnell:

Q. Now, what did you offer to Mr. Crotty when you first talked to him in the way of a license?

A. I didn't offer him anything. We had only exploratory discussions.

Q. And that was about when, do you say?

A. The fall of 1961, is my recollection.

Q. I show you a document which is marked Defendant's Exhibit 10 and ask you whether or not you received that document from Mr. Crotty through the mails, or the original of it. That is a copy.

Mr. Dodds: Would you please tell us what it is? We don't have the defendant's numbers on any of these exhibits. We can't identify them by defendant's numbers.

Mr. McConnell: I will show you the document.

Mr. Dodds: All right.

By the Witness:

A. Yes, I received this, the original of it.

By Mr. McConnell:

Q. Well, read it and refresh your recollection if you will.

335 A. Yes, I will.

Mr. McConnell: Do you want to see this, Counsel?

By Mr. McConnell:

Q. Does this refresh your recollection that you had a meeting with Mr. Crotty on October 18th of 1961?

A. Yes.

Q. Now, he refers here, Mr. Crotty does, in this letter, to some nine patents which you apparently had discussed; did you make any assertions or claims about those patents as to whether or not the Zenith Company was infringing those patents?

A. My recollection is that I indicated to Mr. Crotty that those patents were probably involved in the Zenith color television receivers that we were discussing at that time.

Q. Did you have any discussion at that time of the patent here in suit?

A. Yes, I think we did.

Q. What was said about that, if you recall?

A. Very little. My recollection is that we sort of 336 casually acknowledged that it was in suit.

Q. All right.

Now, I want to call your attention to a statement in this letter in which Mr. Crotty says:

"At the same time you supplied me with a copy of what I understand to be your standard form of license agreement bearing the numeral 918 on its face."

Is that the document that I just asked you about?

A. I don't know. I have already indicated that my recollection was that I did not give him a copy of it, but it may be faulty.

The Court: Does it bear that number on the front?

The Witness: That is correct, your Honor, it bears the number 918, designation 918.

By Mr. McConnell:

Q. You didn't write back to Mr. Crotty and say that he was in error about furnishing you with a standard form of license agreement, did you?

A. I did not.

337 Q. You still maintain you didn't give it to him at that time?

A. I stand on the answer I gave you before. It is my recollection that I did not.

Q. Well, you did have a standard form of license agreement with 918 on it in your company at that time, didn't you?

A. Definitely.

Q. I show you a document which is marked in evidence here as Defendant's Exhibit No. 11, which purports to be a copy of a letter from Mr. Crotty to you under date of November 21st, 1961, and ask you whether or not you received that document through the mail.

Mr. Dodds: Your Honor, I must object to this. We have a stipulation that the other side has agreed that they would supply us with information on the documents that they were going to rely on thirty days prior to the trial. These documents that he has been handing the witness, we don't have any record of, we don't have copies of, and we don't know anything about them. This is a complete surprise, to bring in this correspondence. I wouldn't have any

338 objection if we would have had just the mechanics of having our copies here so that we could look at them, but we haven't received any notice of these papers. We have a list which was supplied to me not 30 days before the trial, but 10 days before the trial, listing some 200-odd documents. We have collected those together. We don't have these documents with us.

The Court: Well, we will do the best we can by letting you read them prior to the time there is any interrogation on them, Mr. Dodds. It will slow us down, but—

Mr. Dodds: I would suggest that a minimum—

Mr. McConnell: What do you want to do about it, Counsel? I want to cooperate with you.

Mr. Dodds: I think it is the minimum that they should supply us with copies of these at the earliest opportunity, these papers which are not on the list which they furnished us about ten days before the trial, so that we could at least read them and see what is in them and be famiilar with them.

339 Mr. McConnell: Well, if you want to defer the examination on these documents until after the lunch hour so that you can examine them, I will go along with you on that. I can take up another subject with the witness.

Mr. Dodds: I don't know how long an examination that you propose. I don't want to delay the proceedings, but I would certainly like, before cross-examination, to have a copy of these and look them over and see what they amount to.

Mr. McConnell: I am not aware that I ever agreed with you to give you copies of what I was going to cross-examine on.

Mr. Dodds: There is a stipulation on file, Mr. McConnell, saying that each party would give the other party a list of documents that they were going to rely on thirty days before trial.

The Court: How many more of these are there, Mr. McConnell, approximately?

Mr. McConnell: Not too many. There are only a few that he hasn't seen. What I am dealing with now is 340 correspondence between Mr. Crotty and Mr. Ruestow and the negotiations that went on with reference to licensing.

341 The Court: Well, I think that if over the noon hour you get some copies made of these that you have not supplied him with copies of, it will serve its purpose. He is going to have an opportunity to read these before you interrogate the witness. It will delay us a little but not as much as—Show the documents to counsel.

Mr. McConnell: Well, we will go to another subject and then we will come back to it after they have had a chance to look at these.

The Court: Do you want to take this document back?

Mr. McConnell: I will take the document back.

Mr. Dodds: Well, what I have referred to was the pre-trial stipulation, Paragraph 4. It says:

> "Each party agrees to furnish the other party at least 30 days prior to trial with a list of such documents on which it intends to rely at the trial. The party having custody of such documents please make
342 them available to other party for inspection."

Mr. Curtis: Your Honor, may I clear this up a little bit? We sent them virtually 99 per cent of everything that we are possibly going to use here. He has had notice of this.

I am quite surprised at these statements that you are now making on the record.

Mr. Dodds: We don't have any notice of these documents. You gave us a list and these documents are not on the list.

The Court: Mr. Curtis, can you take the list that you supplied him with and point out that these documents are on the list?

Mr. Curtis: Yes, your Honor. We will do that and we will show him. Any that are not on the list we will give him copies of immediately.

Mr. Dodds: That is my point, there are some that are not on the list.

The Court: The point is, are they on the list now? Did he have notice of them? I assume, based on what we
343 have here, at least in regard to the first document, the original should be in Hazeltine's files because this is a carbon copy from Zenith.

Mr. McConnell: That is right.

Mr. Dodds: They are in Hazeltine but they are not available readily. We don't have them here in court with us.

The Court: I understand that. That is why I am trying to find out if they gave you notice that they were going to introduce a letter of October 18, 1961.

Mr. Dodds: They did not.

The Court: From Mr. Crotty to this witness.

Mr. Dodds: They did not.

The Court: That is all I am trying to find out.

Mr. Dodds: Yes.

The Court: Apparently they didn't and so—

Mr. McConnell: Well, maybe we could save some time if I could have a five-minute recess and put these documents before counsel and see if there are any here that
344 I am going to use.

The Court: We will take our morning recess now. That is a very good idea, Mr. McConnell. We will take a short recess and will you let the Clerk or the Marshal know when you have completed your exchange of documents?

Mr. McConnell: I will, your Honor.

The Court: Thank you.

(Thereupon a short recess was taken, after which the following further proceedings were had herein:)

345 Mr. Dodds: Your Honor, Mr. Curtis said he thought I had conveyed the impression that Zenith had not supplied us with these documents. They did supply us with the documents, 95 per cent of them. It so happened that

the documents which Mr. Tom McConnell was examining on were the 5 per cent or the 3 per cent—

The Court: I got that impression, Mr. Dodds, from Mr. Curtis, too. All right. It is the difference between 95 and 98 per cent that is the only difference.

By Mr. McConnell:

Q. I call your attention to a document, Defendant's Exhibit No. 11, which purports to be a copy of a letter under date of November 21, 1961, from Mr. Crotty to you, and ask you to look at that and tell us whether or not you got it through the mails?

A. Yes, I did.

Q. Now, in that letter, Mr. Crotty tells you—I'm quoting from Page 2 of the letter:

"I of course am fully aware of the Hazeltine stand-
346 ard license agreement, and understand that a license is available through that instrument under not only these selected patents but also of the patents subject to licensing by Hazeltine."

Is that true? Was that standard license available at that time?

A. Let me answer it this way. As of that moment, yes; but as of a matter of days thereafter, it was not.

Q. Now, this date is November 21, 1961, when it was available; correct?

The Court: That's what he said, Mr. McConnell. Why push your luck?

Mr. McConnell: I know. I just want to get the date fixed.

By the Witness:

A. Yes.

By Mr. McConnell:

Q. All right. Now, was there a maximum on that standard license?

A. I can't remember the details of that license.

Q. Well, do you want to refresh your recollection
347 by looking at the document, license agreement 918?

A. There are—or there is what we termed a lump sum payment in there of $50,000, having to do with monochrome.

Q. Wasn't there an over-all maximum which was equivalent to the maximum paid by RCA under their license?

A. Not in this instrument.

Q. Well, was that offered as a maximum, if you took the package license?

A. No.

Q. You never offered that to Mr. Crotty?

A. No.

Q. Did you discuss with Mr. Crotty—

A. To the best of my recollection, no.

Q. Did you ever have any discussion with Mr. Crotty about a maximum on the RCA license?

A. I don't recall.

Q. Well, was there a maximum in the RCA license?

A. Yes.

Q. Which was in force at that time. And what was that maximum?

A. The RCA agreement supplements this Form 918
348 by providing a maximum of $150,000 a year on color, color television, a figure which was, by the year—this supplemental agreement increased to $200,000 a year at a later date.

Q. And how long did that maximum run?

A. To June 30, 1966.

Q. And wasn't it the policy of your company not to offer a package license to any other licensee any different from that maximum?

A. Would you read that back. I'm not sure I got it.

Mr. McConnell: Read the question, please.

(Question read.)

By the Witness:

A. There was no certain policy on that.

By Mr. McConnell:

Q. You didn't have a policy not to discriminate as between licensees?

A. Again, there was no certain policy. It was generally an attempt to put everyone on a similar basis, meaning non-discrimination.

Q. All right. Now, how was that attempt evidenced or shown?

Well, let me withdraw that question—

349 A. I really can't answer that. It is too vague.

Q. Well, did you make that attempt known to your prospective licensees, that there was an attempt on your part not to discriminate between them and RCA?

A. I don't recall. There may have been casual conversations to that effect, but I have no recollection.

350 Q. You don't recall ever having told that to Mr. Crotty?

A. I do not.

Q. At any time in your discussions?

A. I do not recall. We may have had some casual conversation about it. I do not recall.

Q. Now, Mr. Crotty in this letter, Defendant's Exhibit No. 11, says:

> "Since we obviously have no need for a license under all of the patents of your portfolio, I am most desirous of learning the terms under which individual licenses may be obtained under any of those identified patents. This information is required in order to prepare for further meeting with you on this whole question. I would like a letter of advice at your earliest convenience."

Did you send to Mr. Crotty the license rates on individual patents?

A. The best I can answer that question is, a recall
351 sending him a draft, new form of license agreement labelled "for discussion."

Q. I show you a document which is marked in evidence as Defendant's Exhibit No. 12, and ask you if you can identify that as the document which you just referred to?

A. Yes. Without reading all the fine print in here, that is undoubtedly it.

Q. Now, does that license agreement have a maximum?

A. I've forgotten what it provided. I would have to study it.

Q. Doesn't it have a maximum of $500,000?

A. I don't know. I don't know.

Q. You don't know?

A. Without studying it.

Q. All right. I don't want to take the time for you to study it.

A. It is a long document, and it's three years ago.

Q. You knew that Zenith would reach a maximum on its sets, of any maximum, didn't you?

A. I knew nothing about that.

Q. Well, didn't you know it was the largest producer of television, radio sets in the industry?

352 A. I understood it was.

Q. And the other — RCA reached its maximum, didn't it?

A. Yes.

Q. Producing less than Zenith, RCA reached its maximum.

A. I didn't get that question. Is that a question?

Q. All right. Let's skip it. We will get on to something else.

Didn't Mr. Crotty point out to you, when you gave him that license agreement, that you were putting a maximum of $500,000 on the package in a situation where RCA was getting the same coverage for $200,000?

A. I have no recollection of such a statement, no.

Q. Well, it wasn't acceptable to Mr. Crotty, was it—that license?

A. I don't know. All I know is that the talks were broken off.

Q. All right. I note that that license agreement is designated as something that is a proposal. Was there
353 ever any such license agreement executed by any licensee?

A. No.

Q. That was one peculiar—a proposal particularly for Zenith; is that right?

A. No, it was not only for Zenith.

Q. Well, was it proposed to anybody else?

A. It was a draft for discussion.

Q. Well, was it proposed to anybody else, any other company in the industry, except Zenith?

A. Yes.

Q. Who?

A. I sent a copy—my recollection is pretty certain that I gave the same draft to the General Electric Company.

Q. And did they execute it?

A. No.

Q. Now, at or about the time of these discussions with Zenith, was there some discussion in your company about whether or not a package license constituted a misuse of the patent?

A. Yes.

Q. And what part did you have to play in those discussions, if any?

354 A. Well, it is a long story that took up the next three years. I perhaps am the one that initiated it at the time of these talks with Mr. Crotty. I initiated it by a memorandum which I sent to my president, Mr. Wilson.

355 Q. I show you a document which is marked in evi-

dence as Defendant's Exhibit 23A, which purports to be a memorandum under date of November 20, 1961 from E. A. Ruestow to W. H. Wilson, "Special Report Requested By You."

Is that the document that you are referring to?

A. Yes.

Mr. Dodds: The list that I was given doesn't have a 23A on it.

The Court: Well, will you read the date of it, and who it is from and who it is to, for Mr. Dodds' information?

The Witness: This is a memorandum from me to Mr. W. H. Wilson, dated November 20, 1961.

Mr. Dodds: Thank you.

By Mr. McConnell:

Q. Now, will you tell us the occasion for your preparing that memorandum?

A. I had come to the conclusion that the old standard license agreement 918, which appears to be Exhibit B that you showed me before, was no longer workable. It presented problems.

356 And so, after some thought, I prepared this memorandum to Mr. Wilson as an attempt to explore a new solution to the problems.

Q. I call your attention to your statement on page one of your memorandum, under paragraph two, numbered two. Well, first, you say:

> "The problem is very complex but centers around two major factors; one business, and one legal."

I am referring to two, which is the legal. You say:

> "New trends in the law (patent misuse) threaten to deprive us of the right to enforce our patents if we maintain our present standard license, unless we are willing to accept even lower royalties than we now ask."

What were the trends in the law which you referred to?

A. Well, that is a very broad question. I think most lawyers are aware of a case law on this doctrine of misuse, and that is a very broad question. I think most lawyers are aware of a case law on this doctrine of misuse, and that is all I had in mind.

Q. Well, did you have in mind that under the decisions, the recent decisions of the courts, this standard license
357 which you were using was illegal under the antitrust laws?

A. I didn't think it was illegal.

Q. You thought it was legal?

A. Yes.

Q. I call your attention to page three of this memorandum, under the title, "The Legal Problem (patent misuse):

> "This simply stated is that we may not get ourselves in a position where we are forcing a licensee to take a license under all our patents in order to get those he wants. He must be free to make his own selection of those he wants without being blackmailed to recognize others. If we do this, the courts will not enforce our patents until we purge ourselves of this misuse of patents. That can be a very disastrous penalty if we cannot purge ourselves quickly, and it conceivably could take us six years to do so."

Was that your opinion of your standard license at the time?

A. That was not my—necessarily my opinion of
358 the standard license. It was my opinion of problems we might get into.

Q. Well, wasn't it your opinion of any license that made the licensee take the whole package in order to get what he wanted?

A. That I think—I think I stand on that statement I

made there. I wrote that, and that expresses about what I thought at the time.

Q. Well, you still stand by it, do you?

A. Yes.

Q. Then you say:

"This legal problem is by no means new, but it has assumed a more threatening nature in view of a recent court decision, wherein a company was held to have misused its patents by telling a licensee he could have all patents or only one, but that the rate was the same either way. This decision implies that the rate for one must be proportionately smaller than the rate for all in order to be legal."

Now, what decision were you referring to?

359 A. The Securit decision.

The Court: What decision?

The Witness: I've forgotten the citation.

The Court: No. I mean, you just said a word—

The Witness: Securit, S-e-c-u-r-i-t.

The Court: Just so my court reporter gets it down in the record.

All right. Go ahead.

By Mr. McConnell:

Q. That was the decision by Judge Leahy down in the Delaware Federal Court, wasn't it?

A. I don't know.

Q. You don't know?

A. I've forgotten.

Q. You've forgotten.

Then you say:

"This is precisely the situation with HRI."

That's Hazeltine Research?

A. Yes.

Q. (Continuing.)

"Zenith wants a license under only a few more patents of their own choosing. We will have to offer them
360 at less than our present royalty for all, or run the risk of running afoul of the law and incurring a severe penalty."

Was that your opinion then and now?

A. That was my opinion then.

Q. Now, you say:

"While I once minimized the threat in this misuse problem, I now take a more serious view of it. It is closely related to antitrust problems. And in view of political trends in Washington, I think this whole business is more apt to get worse than better during the profitable life of our color patents."

Was that your opinion at that time?

A. I wrote it. I stand by it.

Q. All right.

A. As of that time.

Q. Now, you never, at any time, offered Zenith a license for patents of their choosing at less than your present royalty rates for all, did you?

361 A. Will you read that one back.

Mr. McConnell: Read the question to the witness, please.

(Question read.)

By the Witness:

A. I don't understand that. You will have to clarify it.

By Mr. McConnell:

Q. Well, you can't answer the question; is that it?

A. I don't understand it.

Q. Well, I'm content with that answer, I guess.

I show you a document which is marked Defendant's

Exhibit 24 in evidence, and ask you in whose handwriting that document is?

A. That's my handwriting.

Q. What was the occasion for preparing that—

A. May I say, I would much prefer to see the original, since these are undated and I am not at all certain whether this is exactly an original copy of it.

The Court: Maybe Mr. Dodds has the original.

362 Mr. Dodds: Yes, your Honor, we do have it—

Mr. McConnell: I would like to see it. I can hardly read it myself.

Mr. Dodds: Which document are you referring to?

The Court: Can you give him a hint of what you want, Mr. McConnell.

Mr. McConnell: It is notes of Mr. Ruestow under date of December 14, 1961, on the L. B. D. memo.

The Witness: I must make a statement. That remark at the top is not my handwriting, and I believe it was added within the last few months by someone else.

Mr. McConnell: Well, all I can tell you is what is on here. That is the only description on the document.

The Court: Let Mr. Dodds look and see if he can find the original.

363 Mr. Dodds: Does the witness want it back?

Mr. McConnell: The witness wants it, I guess.

By the Witness:

A. Very well. I want to point out, first, that the original does not bear that handwriting right at the top which says, "Ruestow's notes on LBD's memo of 12/14/61"; that is not my handwriting and it is not on the original.

By Mr. McConnell:

Q. All right, it is not your handwriting but it is accurate?

A. Yes.

Q. That correctly describes the document, doesn't it?

A. Yes, except for the date. I am not sure of the date.

Q. Well, what was the "LBD memo"?

A. The LBD memo was a memo written by Mr. Dodds to Mr. Wilson shortly after my memo to Mr. Wilson.

Q. The one that we have previously been testifying about?

364 A. Yes.

Q. I call your attention to this note in your handwriting on the paragraph two, entitled "Misuse law".

You say, "He is wrong about the threat of Securit—"

I can't read that name. Can you tell me what that name is? Hasting, is it?

A. Houston.

Q. (Reading.)

"Kenyon, Phil LaFollette agree with me. Many others are worried (Page, Rathburn). Zenith subpoenas us now."

Now, what does that refer to?

A. I have already indicated these were comments on Mr. Dodds' memo.

Q. Well,—

The Court: Well, in regard to the phrase "he was wrong," who was he?

The Witness: Mr. Dodds.

The Court: All right.

By Mr. McConnell:

Q. Well, was it your opinion and that of Houston and Kenyon and Phil LaFollette that the Securit case

365 made a package license illegal?

A. No.

Q. It wasn't?

Then you say:

"Attorney General's report is out of date, with a

new rambunctious Attorney General, R. Kennedy, raising hell in anti-trust matters. GE troubles, common pricing."

What does that refer to?

A. Just what it says. I wouldn't care to amplify it.

The Court: What is "GE troubles"? Could you amplify that?

The Witness: General Electric Company antitrust.

The Court: You are talking about the electrical equipment cases all over the country?

The Witness: Yes.

The Court: All right, that at least makes some sense to me. "GE troubles" doesn't mean anything. Now I know what you are talking about.

366 By Mr. McConnell:

Q. Then you say:

"3. My whole case hinges on the above two points in which LBD is in error. It opens the possibility of higher income and gets misuse off our backs. I must act now. Zenith is forcing me. I must either give them low rates to avoid misuse or raise the package rate."

Now, did you ever give Zenith a lower rate to avoid misuse, at any time?

A. We never got—as I indicated before, these dicussions were broken off. We never got even to the point of discussing it.

367 Q. Well, you didn't, though, did you? You didn't offer them a lower rate to avoid misuse?

A. Not at this time, no.

Q. Now, you say under paragraph 8:

"It was not the absence of ceilings that brought RCA down, it was antitrust shennanigans in Europe. The Government decree is good evidence of that."

Now, what were you referring to by "antitrust shennanigans in Europe"?

A. I don't recall, except that the RCA situation was in the air then, and that is about all I can say.

Q. Well, you knew they were in these pools all over Europe, didn't you, just like your company was?

A. I didn't know anything about what they were doing in Europe.

Q. Well, you knew enough about it to say that there were "antitrust shennanigans in Europe" in your memo, right?

A. Is that a question?

Q. Yes, that is a question.

368 A. All I knew was that a lot of people were shouting about it.

Q. Well, who?

A. The press, Mr. McConnell, many other people.

Q. Which Mr. McConnell? This Mr. McConnell?

A. Yourself.

Q. Where was I shouting about it?

A. In this lawsuit.

Q. In the Zenith lawsuit against RCA, is that what you are referring to?

A. That.

Q. Now, you say it was not the absence of ceiling that brought RCA down. What is the absence of ceiling that you are referring to?

A. Well, I would have to refer to Mr. Dodds' memo which I was analyzing and on the basis of which I wrote these notes before I can say any further.

Q. All right, I will show you a document, Defendant's Exhibit No. 3, which purports to be from L. B. Dodds to Mr. W. H. Wilson under date of December 14, 1961, marked

"Personal and confidential" on the subject of prospec-
369 tive Hazeltine royalty income, and ask you if you can identify that as a report on which you were commenting?

A. Yes. I am going through this hastily, but I assume it is a full copy.

Q. All right.

Your comment under 8 was directed at Page 5 and you say, "It was not the absence of ceiling that brought RCA down."

Now, what did Mr. Dodds say about that? Did he say the ceiling brought them down?

A. Page 5?

Q. Page 5, his memo.

A. I don't find the remark that ties together with my comment here.

Q. All right.

Under 9, in your notes, you say, your comment is:

> "If I am forced to stick to the present agreement, Zenith will make me divide 1.35 per cent up among maybe 80 patents, or if I offer 50 per cent, 80 per cent, 100 per cent deal to pick the patents, then zingo, we are right back in misuse."

370 A. Yes.

Q. Now, actually, you did offer 50 per cent, 80 per cent and 100 per cent deal, didn't you, to Zenith?

A. Not I.

Q. You didn't?

A. I don't recall.

Q. You don't recall making—

A. I mean I didn't. My recollection is that I did not. Whether someone else did, I don't know.

371 Q. Well, you had such a deal, didn't you, of fifty per cent for one patent, eighty per cent for two and a hundred per cent for three or more?

A. Yes, we had.

Q. And you don't know who offered it to Zenith, if they did offer it to Zenith?

A. That is correct.

Q. But you thought if they did offer it you were right back in misuse, is that right?

A. That is what I apparently thought at the time, yes, I did think at the time.

Q. And you say:

"I am really in a box and the only way out is to break down the old walls."

A. Yes.

Q. You didn't break down any old walls, did you?

A. Yes, we did.

Q. What did you do so far as Zenith is concerned?

A. As far as Zenith is concerned, the negotiations were terminated by Mr. Crotty so there was no opportunity to break down old walls.

372 Q. And that was when—well, what have you done to break down the old walls?

A. We had under discussion a number—

Mr. Dodds: Your Honor, I think it would be appropriate to suggest that the witness confine his answer to a period up to May 22, 1963, which was the termination date following the counter-claim in which your Honor has previously ruled would be the termination of this proceeding.

The Court: And I will so do at this time.

By Mr. McConnell:

Q. What did you do up to that time to break down the old walls?

A. We attempted to draft new forms of license agreements.

Q. Well, did you submit any of them to Zenith?

A. I have forgotten. I believe we did submit one in—

just before this May 22nd date. What is it that we were speaking of?

The Court: May something of '63.

373 By Mr. McConnell:

Q. '61, wasn't it?

A. '63, I am sorry.

The Court: We are talking about the date of your counter-claim, Mr. McConnell.

Mr. McConnell: Oh.

The Court: May something.

By Mr. McConnell:

Q. Well, were you convinced at least up until May, or whenever you submitted this new proposal, that your old proposals, your old license agreements, constituted misuse under the patent?

A. No.

Q. You weren't? And this was sort of a gratuitous undertaking, was it? It was not to remedy any of your legal defects in your licensing system that you made up this new licensing agreement?

A. The picture—it was not to remedy, necessarily, defects, it was to solve an economic problem, as far as I am concerned.

Q. Have you had anything to do with negotiating extension of the agreements between your company and
374 the Hazeltine Company and Canadian Radio Patents Limited?

A. Yes.

Q. And what negotiations have you had?

Mr. Dodds: Again, I suggest that the question be confined to the period prior to May 22, 1963.

The Court: That will be the order.

By the Witness:

A. Just exploratory discussions as to what we would do.

By Mr. McConnell:

Q. Well, was there an agreement in existence with Canadian Radio Patents, Limited up to the date of the filing of the counter-claim here under which your patents were in the Canadian Radio Patent Limited Pool?

A. Would you read that one back?

Mr. McConnell: Read it back to the witness.

(The question was read.)

By the Witness:

A. Yes.

By Mr. McConnell:

Q. Had you any negotiations prior to that date
375 seeking to renew that arrangement?

A. Yes.

Q. And I take it that those negotiations had not borne fruit, at least to the time of the filing of the counter-claim, is that right?

A. They had not borne fruit by that time.

376 Q. How long have you had to do with the Canadian Radio Patents, Limited matter up in Canada?

A. Since 1954. Perhaps I better make that a little more clear. If you are talking about the contractual arrangements, it would be since, oh, the last year. When I said 1954 I had in mind the filing of patent applications up there, which was my responsibility.

Q. Well, in your handling of the matter, the relationships of your company with Canadian Radio Patents, Limited, did you find out that their output license from that pool was limited to licensees who manufactured in Canada?

A. No.

Q. You never found that out, at any time?

A. Would you restate that to make sure that I understood it correctly?

The Court: Will you read the question, Mr. Comeau. (Question read.)

By the Witness:

A. Well, let me try that again. I heard a lot of talk to that effect, but as far as I understood it, it was
377 not unqualifiedly so.

By Mr. McConnell:

Q. Did you ever see a copy of the standard license issued by that pool?

A. No.

Q. Never saw it in the files of your company?

A. I don't believe I have. It is quite possible that if there is one in the files I might have seen it at one time or another, but my recollection is that I did not.

Q. I show you a document which is produced from the files of the Hazeltine Company, which is marked in evidence as Defendants' Exhibit 123, and I ask you whether or not you have ever seen this document before, or a copy of it?

A. No, I have no recollection of having seen this document.

Q. Have you ever made any inquiry of the Canadian Radio Patents, Limited, as to what kind of license they were using, output license?

A. No.

Q. Did you know that there was litigation between Zenith and RCA and General Electric over the restric-
378 tions of that pool?

A. By way of the Law Reports, yes.

Q. I call your attention to this provision under Article II of this form of license which comes out of your files:

"The licensor hereby grants to the licensee upon the terms and conditions hereinafter set forth a personal, indivisible, nontransferrable and nonexclusive license

only for the licensed apparatus hereinafter specified and defined and only as follows:

"a. To manufacture licensed apparatus in Canada and to sell or lease licensed apparatus so manufactured and

"b. To have licensed apparatus manufactured in Canada for the licensee and to sell or lease such licensed apparatus so manufactured for the licensee subject to the payment of royalties thereon by the licensee as provided in Article III hereof. Sublicensed apparatus shall be deemed to be licensed under this agreement at the time of sale or lease by the licensee."

379 You never heard of that clause being in the standard license?

A. No.

Q. Never heard of it before today?

A. I have already indicated that I never saw the—had any recollection of having seen the agreement and, therefore, I haven't seen it before today.

Q. That wasn't quite my question.

My question was whether or not you had heard of it before from any source.

A. No, not that provision, no.

380 Q. Were you familiar with the antitrust suit brought by the United States Government against RCA and others down in New York seeking to declare this pool illegal because of that restriction?

The Court: Which pool, the Canadian pool?

Mr. McConnell: The Canadian pool.

By the Witness:

A. I thought I had already answered that.

The Court: This is a new question. Had you ever heard of that lawsuit? This is the question.

By the Witness:

A. I thought we referred to that lawsuit a few moments back, or perhaps you were talking of another. In any event, my only knowledge of them was what I have read in law reports.

By Mr. McConnell:

Q. Well, from law reports or any other source, did you ever find out that the United States Government was attacking that pool because of that restriction on imports of sets from the United States into Canada?

A. I can't answer that. I just don't know what the
381 United States Government was attacking. All I know is that there was litigation.

Q. Well, did you know that as a result of it the RCA patents were taken out of that pool?

A. No, I do not.

Q. Nobody ever told you that? You never found that out from any source, is that right?

A. No, I don't know that.

Q. Did you ever read the decree that was entered in that case?

A. I did see a copy of the decree, yes.

Q. When did you see a copy of the decree?

A. Oh, a year ago, perhaps longer.

Q. And you don't recall what was in it?

A. I don't recall what was in it.

Q. Have you had anything to do with the negotiations with the pools in England?

A. Yes.

Q. What have you had to do on that subject?

A. I have reviewed the contracts of extension, and that is about all.

Q. Well, what do you mean "reviewed them"? You have looked at them and read them?

A. Looked at them, yes.

382 Q. And you are referring to the extensions of the A.7 pool and the A.8 pool, is that what you are referring to?

A. I have forgotten the numbers. I think the numbers A.8 and A.7 are correct, but I am not sure.

Q. The A.8 pool is still in existence, is it not?

A. I don't know the number. There is a pool still in existence.

Q. And in that pool you have the Hazeltine patents, do you not?

A. Well, they are as provided in the Hazeltine contracts which you have here. There are certain provisions about the patents going into the pool, and I don't remember the details.

Q. Do you remember that you have a partner over there called General Electric Company, Limited, in England?

A. I know General Electric Company, Limited. Whether you call it a partner or something else, I don't know.

Q. You wouldn't want to characterize it?

A. I don't want to characterize it. We have a

383 written contract.

Q. Is that one of the things that you have reviewed, the contract?

A. Yes, I have read that.

Q. Have you reviewed all of the contracts?

A. No.

Q. Well, what was the purpose of reviewing them?

A. The more recent ones?

Q. Why were you reviewing them?

A. To familiarize myself with the position of my company in contract matters.

Mr. McConnell: I have no further questions of this witness.

384 The Court: Have you anything, Mr. Dodds, at this time?

Mr. Dodds: Yes, I have.

The Court: Go ahead.

Mr. Dodds: Do you want these papers?

Mr. McConnell: Yes, I will take them back if they are mine. Thank you.

The Court: Did you get your original back, Mr. Dodds?

Mr. Dodds: Yes, I have it.

The Court: All right.

Mr. Dodds: I apologize for some confusion of exhibits. We have had three successive lists and they have been arranged in different orders and with some 250 exhibits, it has been hard to make a current list.

The Court: It is not necessary to make excuses. I am amazed, with the volume, that you are able to do as well as you have.

Cross-Examination by Mr. Dodds.

Q. Mr. Ruestow, do you consider yourself an expert in the antitrust field?

A. Definitely not.

385 Q. Would you state whether or not, when the company has been presented with antitrust problems, you have called on outside counsel expert in that field?

A. The company has, yes, definitely.

Q. You were asked with respect to this $200,000 maximum, which is in effect in the RCA license, and I think you were asked whether or not that would extend to other licensees having what has been characterized as a package license; is that correct?

A. I was asked the question, yes.

Q. Yes. I think you indicated that—I don't have the transcript, but I think you indicated that it was the policy of Hazeltine Research to treat its licensees equally so that similar terms would be offered to another company; is that correct?

A. I think what I meant to indicate is that we had that desire as simply good business. It might not have been possible in all events.

Q. Now, still on this maximum of $200,000, would you state whether or not it would apply to a license, whether the licensee elected to have a license under all of the Hazeltine patents or only under some of the Hazeltine pat-
386 ents? In other words—I will rephrase the question.

Assume that a licensee elected to take a license, including a license for color television and elected, say, only four of the Hazeltine patents. Would you state whether or not this $200,000 maximum would still apply?

A. No, I think not.

Q. Well, in that case, would the maximum be more or less? And I am speaking as of May 22, 1963.

A. Would the maximum be more or less?

Q. Yes, if the licensee elected fewer than all of the Hazeltine patents.

A. I really don't know. I can't at the moment answer the question. I haven't got all the contracts firmly enough in mind.

Q. Well, the point that I had in mind was to state whether or not—and if you don't remember, obviously, say so; but state whether or not the $200,000 maximum was effective only with respect to licensees electing the entire package, or whether it was effective only with respect to
licensees electing fewer patents of the Hazeltine
387-8 group.

A. I thought I already answered that. As far as I'm concerned, the maximum we are talking about was in one contract. What we would have done with other contracts I'm not sure.

Q. Now, you were examined about Defendant's Exhibit 27, which is the one I think you have in your hand, relating to comment on a memorandum of myself to—I'm sorry;

yes, with respect to a memorandum which I had written to Mr. Wilson.

Would you state whether or not that concern which you had as to misuse of patents arose from, say, an extension of the form of license agreement then in effect to the color television field?

A. My concern was definitely with the color television area, yes, if that's what you mean.

389 Q. Do you know whether or not the form 918 license about which you have testified was drawn primarily with the view of black and white television, or color television, or both?

A. It covers both. But at the time it was written, monochrome television was the only thing of importance.

Q. Insofar at least as the Hazeltine patents are concerned, in your opinion, is their situation different in respect to black and white television than color television, or the same?

A. I'm not sure I got the first part of that. Will you read it?

The Court: Will you read the question, Mr. Court Reporter.

(The question was read.)

By the Witness:

A. Their situation is completely different in terms of relative patent strength.

By Mr. Dodds:

Q. As of 1958, which is the time I believe you said this form 918 agreement went into effect, what was the status of the commercial manufacture and sale of colored television receivers in this country?

390 A. At that time, only the RCA company was manufacturing colored television.

Q. And do you have any idea of the relative magnitude

of the manufacturing and sale of color as against monochrome? Was it one per cent, ten per cent, fifty per cent?

A. Oh, according to my best information, it was extremely minor. It must have been around one per cent or lower.

Mr. Dodds: I believe that is all.

The Court: I have a question. You said that there would be a difference in the maximum if they took less than the whole package. Would there be a difference in the rate of forty-five hundredths of one per cent of total sales if they took less than the whole package? You did use that figure, didn't you?

The Witness: No, I didn't use—

The Court: I mean, you heard it read.

The Witness: Yes.

The Court: Are you familiar with that figure, forty-five—

The Witness: Yes, I'm familiar with that figure.

391 The Court: Would that percentage be less or more or different in regard to total sales if they took less than the whole package, the package deal, or did that question ever come up?

The Witness: That question never came up, your Honor. It is speculative—

Mr. Dodds: Your Honor, I think you can hark back to the early part of this trial, and remember Mr. Thomas' testimony. He pointed out that under the 918 license for monochrome television, the rate was, I think, .95, and he referred to some licenses that took a license under a single patent at half that rate. I believe that is of record.

The Court: Then maybe it is time for our noon recess. We will recess until 2:00 o'clock.

(Whereupon, the trial in the above entitled matter was recessed until 2:00 o'clock P.M., the same day.)

392 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—59-C-1847) * *

Before Honorable Richard B. Austin
on February 18, 1964, at
2:00 o'clock P.M.

Trial resumed pursuant to recess.

Appearances:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

393 The Clerk: Case on trial.

The Court: You may proceed, Mr. McConnell.

Mr. McConnell: I want the witness back. Are you through with your cross?

Mr. Dodds: Yes.

The Court: He said he was.

Mr. McConnell: Just a couple more questions on redirect.

The Court: You want some redirect of this adverse witness.

EDWARD A. RUESTOW, having previously been sworn as an adverse witness, resumed the stand and was examined and testified as follows:

Redirect Examination by Mr. McConnell.

Q. Mr. Ruestow, Mr. Dodds asked you if you were an expert in antitrust law and you said no. Now, I want to ask you, are you a lawyer?

A. I am a lawyer.

Q. Where are you admitted to practice law?

A. In the District of Columbia and New York state.

394 Q. In this memorandum which is in your handwriting in evidence as Defendant's Exhibit No. 24, you refer—

A. May I have a copy of it or, rather, the original.

The Court: Have you got the original, Mr. Dodds?

Mr. Dodds: You want the original?

The Court: Your witness wants the original, or his witness wants it. I don't know whose witness it is.

By Mr. McConnell:

Q. Now, on the first page of that memoranda or memorandum, you say:

"Many others are worried about this misuse law,"

And you cite Page and Rathburn.

Who are they?

A. Attorney associates of mine, or friends, I should say.

Q. Are they Chicago lawyers?

A. Rathburn is.

Q. How about Page?

A. I don't know where he is.

395 Q. Is he a lawyer?

A. Yes.

Q. Then you refer to LaFollette, Phil LaFollette.

A. Yes.

Q. Is he a lawyer?

A. Yes.

Q. And you also refer to Houston, is he a lawyer?

A. Yes.

Q. And Kenyon, is he a lawyer?

A. That is one name, Houston Kenyon.

Q. Houston Kenyon? Where does he practice law?

A. New York City.

Q. Now, in your note you say that they are all worried about the misuse, is that right?

A. Well, the words I used are "others are worried".

Q. And you cite their names.

A. Yes.

Q. Now, you also say on Defendant's Exhibit No. 27—well, let me ask you about Defendant's Exhibit No. 27; is this memorandum in your handwriting?

396 A. Yes. Again, I would like the original, because I am not at all certain that these pages all fit together.

Mr. McConnell: The witness wants the original of 27.

Mr. Dodds: Your Honor, I object to consideration of this as being outside the scope of the direct examination. This Exhibit has not been brought into the case, I believe.

The Court: Well, it may be—of course, I don't know what this says, but it may be that the cross examination has opened the door to this. I don't know what it contains.

Mr. Dodds: Well, I would like to make an objection subject to a ruling connecting it up with the cross examination.

Mr. McConnell: Well, I will state what it is for. You asked the witness whether or not he was an expert in anti-trust law and then we have reference to four other lawyers in one document, and in Defendant's Exhibit No. 27 we have a reference to Mr. Diggins who is worried about this

397 misuse and I want to find out who Mr. Diggins is.

Mr. Dodds: For that purpose, I will withdraw the objection, your Honor.

The Court: All I have to do is look at the front of my plaintiff's pre-trial brief and I would assume that he is a lawyer.

Mr. McConnell: Yes, he should be or he shouldn't be here. Have you got the original?

The Court: You want to ask him who Mr. Diggins is?

By Mr. McConnell:

Q. Have you got the original?

A. No.

Q. Who is Mr. Diggins?

A. Mr. Bartholomew Diggins is sitting in the courtroom here.

Q. Well, Mr. Diggins is an expert in antitrust law, isn't he?

A. I suppose so. I think whether he is or not is really not within my province to say.

398 Q. Well, do you know whether or not he has written articles on antitrust law?

A. I do not know.

Q. You don't know. You do know he is a lawyer?

A. I do.

Q. Well, was Mr. Diggins worried about this misuse defense?

A. Oh, I don't know.

Q. You don't know.

The Court: Do you want to get the original of that?

Mr. McConnell: Yes, I want the original.

The Court: To refresh his recollection.

By Mr. McConnell:

Q. All right. Will you look at the original of Defendant's Exhibit 27, and will you look at Page—

A. There is some mistake here. I don't think I have the same thing as you have, Mr. McConnell.

Q. All right. Now, here is what I want to ask about—that statement there in your notes. See if you can find it in your original.

A. It's not on this original.

Q. Not on the original?

399 A. Not on the original of what I have before me.

Q. Can you identify that as a copy of your handwriting?

A. That happens to be my handwriting, yes.

Q. Well, your note that Diggins was worried about this —can you tell us what that refers to?

A. I wrote it one time, probably having in mind some casual remark he made to me, and that's all I can recollect right now.

Mr. McConnell: I have no further questions of the witness.

The Court: All right.

Recross Examination by Mr. Dodds.

Q. Mr. Ruestow, do you know if Mr. Page is an anti-trust lawyer or a patent lawyer or a general lawyer?

A. He is a patent lawyer.

Q. The same question with respect to Mr. Rathburn.

A. Patent lawyer.

Q. The same thing with respect to Houston Canyon.

400 A. Patent lawyer.

Mr. Dodds: That is all.

The Court: All right. Step down.

(Witness excused.)

The Court: Next witness.

Mr. McConnell: I would like to call Mr. Dodds for adverse examination, your Honor.

The Court: You have counsel here with you. We don't have to send for him today, do we?

Mr. Dodds: That's right.

The Court: The last time we had to send for counsel.

Mr. Dodds: That's right.

Mr. Diggins: And I have already been identified, your Honor.

LAURENCE B. DODDS, called as an adverse witness by the defendant herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Mr. Dodds, did you ever actively undertake
401 negotiations with reference to the placing of the Hazeltine patents into the English pool?

A. Yes.

Q. And when did you undertake those negotiations?

A. Maybe I should qualify that. I did not ever undertake negotiations to place the Hazeltine patents in the British pool. But I did participate in negotiations with the General Electric Company, Limited, of England for a continuation of the patents in the British pool.

The Court: Which means that they were in the pool before you—

The Witness: Right.

The Court: All right.

By Mr. McConnell:

Q. Well, you also undertook to negotiate with a company known as Electrical and Musical Industries—EMI, did you not?

A. I had some discussions in 1952, which included representatives of EMI.

Q. And EMI was a member of the English pool, was it not?

A. Yes, and so was the General Electric Company, Limited.

402 Q. I show you a document which is produced from the Hazeltine files, which is marked Defendant's Exhibit No. 76-B, and ask you if you can tell us who prepared that document.

A. I did not. I am not certain what individual did prepare that document.

Q. Now, this purports to be "Notes of Discussions with the Hazeltine Corporation;

"(Mr. L. B. Dodds) and EMI." Did you participate in such discussions?

A. I just so testified that I had.

Q. Did you attend discussions at Magnet House on the 13th of November, 1952, at which Mr. T. W. Heather, Mr. K. H. Nalder, and Mr. A. F. Cornock were present?

A. I do not independently recall that date, but I will accept the statement of the date. And with accepting that, I did attend such negotiations.

Q. Now it is recited here that—well, before I ask that question—I withdraw that.

Who is Mr. Heather?

A. Mr. Heather, at that time, was, I believe, assistant managing director of the General Electric Company, Limited.

403 Q. And it states here that:

> "Mr. Heather having welcomed Mr. Dodds, the draft continuation agreement (continuing all existing Hazeltine/GEC agreements to 31 December 1952 with certain adjustments) was referred to."

What was the reference made to that continuation agreement?

A. I just don't independently recall, of that discussion some twelve years ago, the details. One of the purposes of the negotiation was to negotiate a renewal of the Hazeltine agreement with the General Electric Company which was about to expire.

Q. Well, do you recall that there was a proposed draft there before you, which you were discussing?

A. I'm sorry, I just don't recall that.

Q. You don't recall that?

A. No.

Q. The memorandum then says:

"Mr. Heather then outlined the state of negotiations in Great Britain for the formation of an A.7 Broadcast
404 Licensing Pool to succeed the existing A.6 pool on the 1st of January 1953. He said that EMI, Marconi, and Philips had completed an agreement to collaborate in licensing from 1 January 1953 to December 1957, and he believed the trade would wish to have licensing arrangements in being. A copy of the EMI/MWT/Philips pooling agreement (omitting Points allocations) was handed to Mr. Dodds with a copy of a note on the variations in the A.6 pooling agreement."

Do you recall that document having been handed to you?

A. I recall vaguely the document. I do not recall the details of that document.

Q. Well, do you recall having examined at that time the A.6 pooling agreement

A. I do not recall that. I do not think that we went beyond the document to which reference was made there.

Q. Do you recall a note advising you of what differences there were between this proposed draft and the A.6 pooling agreement?

405 A. Yes.

Q. And you examined and studied that, did you?

A. I at least examined it.

Q. Then it stated that:

"Mr. Heather said that in principle the GEC"—that's General Electric Company, Limited, I assume—"wished to be licensor members of the pool, and would like to know if Hazeltine also wished to join it, either alone or (as GEC would hope) jointly with the GEC. Mr. Dodds replied that Hazeltine would like in principle to row in with the GEC."

Did you make that statement?

A. I have no independent recollection.

Q. Well, do you recall that you wanted to get in the pool along with GEC at that time?

A. That isn't a correct expression. It wasn't get in. We were willing to continue our relationship with the General Electric Company, which had theretofore placed the Hazeltine patents with their own in the British pool.

406 Q. Then it stated in this memorandum:

"Mr. Heather then said that a stage had been reached at which direct discussion by Hazeltine-GEC (as partners) with the other present parties was needed. It was arranged by telephone to have a discussion with Mr. Preston and Mr. Dale-Harris of EMI at Magnet House on November 18."

Do you recall the arrangements for such a meeting?

A. I recall the arrangements for such a meeting. I do not specifically recall that date, although I will accept it as it is so stated in that memorandum.

Q. He then states:

"It was agreed that grounds for asking for a higher pointing were: (a) color potentialties; (b) possible extension of Hazeltine Patent Number 436,940 (mixers) and potential use in TV; (c) recognition of need for stability of income for a research organization such

407 as Hazeltine. It was agreed to see solicitors and counsel as early as possible regarding the extent of the Mixer patent."

Now, what was the higher pointing that you were going to talk about?

A. It is my recollection that some representatives of the British pool had made an offer to the General Electric Company for the participation by General Electric Company and Hazeltine collectively which Hazeltine considered

unsatisfactory. And the objective of my visit was to attempt to obtain what we thought was a more equitable share of the royalty income.

408 Q. In other words, you wanted to get more money out of the pool, isn't that right?

A. We wanted to get more money from our arrangement with the General Electric Company.

Q. And out of the pool. Your money was coming from the pool, wasn't it?

A. Our money came from General Electric Company and it in turn drew money from the pool.

Q. Now, it is stated here:

"As between Hazeltine and the GEC, it was agreed that they wished to act in concert in licensing, discussion of division of income to be deferred."

A. Well, the term "in concert" is not a word of my choice and it has different meanings.

I understood that the purport of the meeting was that Hazeltine would continue its contractual relationships with the General Electric Company whereby it had the right to promote the use of the Hazeltine inventions in Great Britain.

Q. Then you were sharing the income from the pool fifty-fifty, weren't you, at that time?

409 A. We were, at the time, sharing—getting a 50 per cent participation of what the General Electric Company collected from the pool.

Q. Then the writer of this memo goes on to say.

"As regards the former license from Hazeltine covering manufacture by the GEC under the Hazeltine patents, Mr. Gornock asked whether it was really equitable now that the GEC paid substantial royalties to the pool in which Hazeltine participated in drawing its share of pool income, that the GEC should also continue to pay royalties direct to Hazeltine in addition."

Now, is that a correct statement, that Hazeltine participated in drawing its share of pool income?

A. That, again, would not be my choice of words. That was the writer's choice of words.

Q. Well, the writer was one of those who was in this negotiation, I take it.

A. I believe so.

Q. Then he goes on to say:

410 "The general sense of the discussion was that GEC would not continue to pay Hazeltine a direct royalty for the use of Hazeltine patents in Great Britain, apart from Hazeltine's share of the pool income."

Now, what is Hazeltine's share of the pool income?

A. In my view, it did not have any share in the pool income directly.

Q. Well, apparently this man had a different view. You can go that far.

A. Apparently he did.

Q. That you had a share of the pool income.

Well, did you have 50 per cent of the pool income that was paid to GEC?

A. We had 50 per cent of the income which GEC obtained from the pool.

411 Q. Then this refers to a discussion on the A.7 pool which apparently took place at Magnet House on the 17th of November, 1952, present Mr. T. W. Heather, Mr. L. B. Dodds, and Mr. A. F. Cornock. Do you remember being present at such a discussion?

A. It is my recollection that that was the same date and the same group to which you previously referred.

Q. Well, do you remember this discussion between these three gentlemen on the 17th of November, 19—

A. I do not remember any distinction between discussions. My recollection is that the discussions continued

most of the day, but I don't remember exactly who sat—whether it was a different group in the morning than in the afternoon, for example; that I do not recall.

Q. You have identified Mr. T. W. Heather. Now, can you tell us who Mr. A. F. Cornock is?

A. Mr. A. F. Cornock, at that time, was manager of the patent department of General Electric Company.

Q. Now, in this discussion, this last discussion I am
412 referring to, it's stated:

"Mr. Heather, in the light of this, suggested that one should not, in the forthcoming discussions with EMI attack the general nature of the pooling arrangement, but should argue about the method of evaluating patents.

"Mr. Dodds said that he was generally of the same view but felt that pool voting by a majority of points holding was objectionable and might also be criticized."

Do you recall making that statement?

A. Yes.

Q. (Reading):

"Mr. Heather said the point had been noted, but one was conscious that this method had not in the past led to difficulties in practice.

"Mr. Cornock reassured them that the majority vote applied only to a limited number of matters and could not compel the bringing of infringement actions by a patentee or be used to alter the participations of the
413 pool parties."

Now, you were interested in what is happening inside the pool, is that correct?

A. Only to the extent that it might affect the income of the General Electric Company and thus, indirectly, Hazeltine's income.

Q. Well, anything that affected the income of the General Electric Company directly affected the income of Hazeltine, did it not?

A. Right.

414 Q. (Reading):

"Mr. Heather then asked whether, in discussion, one should, one, attack the method of pointing or; two, the detailed evaluations of the present method of pointing.

"Mr. Cornock said that while details of EMI's own evaluation could be criticized to some extent, he felt that an attack on one would be necessary to produce any effect, though he doubted whether Mr. Preston and Mr. Dale Harris would consider themselves free to discuss this, as Mr. Shoenberg objected to discussing arrangements with the two parties jointly, though prepared to discuss with each separately. Possible modes of attack would be, A, to criticize the gamma of the point scale as having produced a result obviously not representative of the disadvantage that the pool would suffer if GEC and Hazeltine were not included."

Now, wasn't Hazeltine included in the pool at that

415 time?

A. No.

Q. It wasn't?

The Court: Could you tell me, Mr. Dodds, what this pointing business means?

The Witness: Yes.

The Court: I assume it has nothing to do with setters.

The Witness: No.

At that time, in order to minimize the disputes between the pool members as to their relative participations, a formula was worked out for evaluating the patents of the different members, and the formula resulted in assigning a certain number of points to the patents of each participat-

ing member. Then they added up all the points, and I believe at the time that it came out something like—my recollection is 1600 points, or something like that, and then they divided each party's points by that total pointage to determine what his percentage participation would be.

The Court: And that was based on the number of
416 patents one had in there or the importance of the patents?

The Witness: Well, it was a composite factor that took both into account. The formula included a factor for the number of patents and it also included a factor for the extent of use of certain of the patents.

The Court: All right.

The Witness: In other words, a patent which was in widespread use was given a larger number of points than a patent that was only a little or not at all.

The Court: All right, that clears it up for me.

By Mr. McConnell:

Q. And the Hazeltine patents were given some points, weren't they?

A. Yes.

Q. And you wanted the Hazeltine patents to be given a larger amount of points than was then contemplated, isn't that true?

A. No, I was not directly interested in points. What I was interested in was the percentage, irrespective of the formula by which it was arrived at.

417 The Court: Did the GE, Limited—were Hazeltine and GE patents in for the same number of points?

The Witness: The General Electric Company patents and Hazeltine's were considered as a unit, as an entity, and were collectively—and then, of course, the pool didn't have any interest in how those were distributed as between the parties.

The Court: I understand that, but this pointing had to do with the combined patents of Hazeltine and General Electric, Limited.

The Witness: Right.

The Court: All right. It wasn't a separate pointing thing for Hazeltine.

The Witness: No.

The Court: All right.

By Mr. McConnell:

Q. Then this memorandum says:

"After further discussion, in the course of which it was felt that the securing of a change of gamma—"

What is a change of gamma?

418 I believe a gamma is defined as the ratio of the implemental change in income to the implemental number of points over the range of the decimal points.

The Court: And what language does that come from, CPA's or engineering?

The Witness: Engineering. That comes from engineering. An amplifier is generally considered to have a gamma if it is a non-linear amplifier. It has a curve characteristic so that it responds more in one portion of its range than in a different portion of its range.

By Mr. McConnell:

Q. (Reading):

"After further discussion, in the course of which it was felt that the securing of a change of gamma might have undesirable future repercussions, and that an argument for revaluation of color or FM were adopted was less desirable than the adoption of the attitude that the present pointing did not do justice to Hazel-

419 tine/GEC, Mr. Heather summed up the proposed opening for the discussion with EMI as follows:

"1. Hazeltine and the GEC intended to operate together.

"2. Mr. Dodds had visited England to take part in joint discussions as the matter was of great importance to Hazeltine.

"3. The parties wished to cooperate, but on an equitable basis. EMI would then be asked to justify their scheme by stating its merits and how it was expected to work out, and it would be pointed out to them that it did not do justice to Hazeltine's potentialities or the value of acquiring rights in their inventions as an insurance policy."

Now, did you go along with that discussion and that proposed method of handling the negotiations with EMI?

A. I believe I did.

420 Q. What is meant here by the statement: "Value of acquiring rights in their inventions as an insurance policy"?

A. I believe the meaning of that was this: At the time, as I previously stated, Hazeltine had what it believed to be important patent position in the field of color television. At the time there was no color television in Britain. It was not sure—no one was sure just when they would have color television and, therefore, it was thought to be an insurance for the pool to have the rights in important Hazeltine color television patents should color television become commercial during the period of the next pool.

Q. In other words, that was to insure a prospective licensee that he wouldn't be sued on something that might eventuate out of applications for color and other things?

A. It was to insure that the licensee of a pool, if color should materialize within the period of the pool, would be licensed under the Hazeltine color television patents.

Q. Now, do you recall on the following day, on the 18th

of November, 1952, at Magnet House, you had a con-
421 ference with the EMI people?

A. I recall that on the day following the discussion with the General Electric people we did have such a conference which was attended also by two representatives of EMI.

Q. Was Mr. Dale-Harris of EMI there?

A. Yes.

Q. What was his position with EMI?

A. He was, I believe, manager of their patent department.

Q. And who else was there from EMI, if you recall?

A. Mr. S. J. Preston.

Q. What was his position?

A. He was assistant to Mr. Dale-Harris.

Q. All right, it is stated that:

> "Mr. Heather opened the discussion by saying that Hazeltine and the GEC wished to act together and approached the question of cooperation with EMI in the most friendly spirit."

Do you recall that statement being made?

A. I do not recall any specific statements. I recall only the general substance of the discussions.

422 Q. Do you recall that EMI was the most important member of the pool?

A. Well, I don't know what you mean by "most important," Mr. McConnell.

Q. Well, it had the largest number of patents, didn't it?

A. I do not know that.

Q. You don't know that?

Do you remember that they had the disposition of the RCA patents in the pool?

A. I do not specifically recall as of that time exactly what the nature of their rights was, but I do know as of

that time they had some rights in the RCA British patents.

423 Q. Then he goes on to say:

"They understood that the proposed scheme for the next pool was on the same general lines as for the past pool and the main point for consideration was, therefore, what was a fair basis for the assessment of holdings. They would therefore like to know the basis for EMI's proposed method of scaling holdings. Mr. Pressman said that TV design was now stabilized, and as it had in the past been necessary to bring actions against obdurate infringers, patents in force and available for action against infringers had been weighed heavily."

Do you recall that discussion?

A. I do not recall that specific discussion.

Q. (Reading):

"Mr. Heather then asked why the particular scaling now proposed had been adopted. It weighed very heavily against potentially useful patents not actually in use at the moment, and he would like to know
424 whether other probable members of the new pool had accepted it. Mr. Dale Harris said that he thought it irrelevant whether others had accepted the scale. Mr. Preston said that the scale was somewhat on a 'cut-and-try' basis, adopted after considering the results of a range of possible scales. Mr. Heather repeated that it put a very high weight on patents actually in use: The GEC and Hazeltine had been concerned by the facts that, (a) patents expire, (b) new ideas become important, and (c) licensees take a license partly as an insurance policy. It was not clear that the scale took care of these factors properly."

Do you recall that argument being made in favor of your patents?

A. Yes.

Q. (Reading):

"Mr. Dodds said that, in the U. S. A., a factor which markedly influenced licensees was not so much the ex-
425 isting patents as the potentialities of the licensor. He referred to color TV, saying that it would only be a question of time before it came in, and it was expected in about two years in the U. S. A."

Do you recall making that statement?

A. I don't recall the specific statement, but I recall comments to that general effect.

426 Q. Then they say that you made this statement:

"A possible way of dealing with this would be to revalue holdings when color was adopted, but he was not really in favor of revaluation during the currency of a Pool. Mr. Preston said that he agreed with the two last comments, and added that, if revaluation were carried out, it would have to affect all licensors and EMI themselves considered they would still have a strong position, to which Mr. Heather replied that EMI had made a change of scale now and might propose a further change of scale when color came in. Mr. Dodds further pointed out that an adjustment would not affect all parties equally, because not all had had a long term research program on color as Hazeltine had had. Evaluation at one point per patent not in use did not do justice to the future importance of color, and Hazeltine's evaluation would increase more heavily than that of RCA as color developed."

427 Did you make those statements to the EMI representatives there?

A. As I said before, I do not remember making specific statements, but I remember making comments to that general purport.

Q. Well, your arguments were directed to the point of trying to get a better point rating for your patents in that Pool, weren't they?

A. No, they were not.

Q. They were not?

Then the writer of this says:

> "Mr. Preston said that he thought color was unlikely during the 'A. 7' Pool. He also pointed out that EMI had had to give an undertaking to the BBC that their patents would be available to manufacturers, and he thought that others in a dominant position would probably have to do the same.
>
> "Mr. Heather said that the GEC had had a certain participation in the past, and a reduction of participation in the next Pool needed to be justified. Moreover, suppose the Mixer Patent were extended for five years,
428 shortly after the formation of the Pool, what adjustment would the formula have provided for this important patent which would then be in existence at the date of issue of new Pool licenses? This led to further discussion about the evolution of formula for Pool pointing, in the course of which Mr. Dodds said that the formula could only be a first approximation and would need adjustment to take care of potentialities and 'intangibles'."

Did you make that statement?

A. Again, I do not recall making the statement in those exact words. I do recall making a statement to that general purport.

429 Q. Well, you were trying to make some changes in the pool's evaluation of patents, weren't you?

A. I was trying to make—no, not exactly, or no with qualification.

Q. Well, you had some point in being there and discussing the value of Hazeltine patents, didn't you?

A. Mr. McConnell, I stated previously that my sole purpose there was to get more bucks for Hazeline.

Q. Right. I think we are all in agreement with that statement.

> "Mr. Cornock pointed out that some subjective judgments were inevitably incorporated tacitly into any formula which was not impossibly complicated, so that there was no logical inconsistency in making an allowance for Hazeltine's potentialities."

Now, that allowance they wanted to make was to increase the pointing for the Hazeltine patents, wasn't it?

A. I don't believe that it was necessarily a question
430 of increasing points at all. It was a question of increasing the proportion of the net pool income which the General Electric Company would receive.

The Court: Wouldn't the net pool income depend on the pointing system?

The Witness: No, your Honor. The pointing system was only a question of the distribution of the pool income as between those members of the pool. The pool income was dependent upon the percentage of royalty incorporated in the licenses issued by the pool to the British television manufacturers.

The Court: So the pool income could be increased by raising the rate for a licensing agreement?

The Witness: By doing that or by just an increased volume of production.

The Court: I agree. All right.

By Mr. McConnell:

Q. But your share of the pool. Hazeltine's share, would be increased if the points given to the Hazeltine patents was increased, wouldn't it?

431 A. That is one way in which it would have been increased.

Q. All right, if it is one way, that is enough.

Then this statement goes on:

"Mr. Heather thereupon asked how many points EMI expected members other than they would hold in the pool, and on being told that it was expected that the non-EMI points would approximately equal the EMI points so that the GEC-Hazeltine holding would probably be about 6 percent of the pool, on the existing evaluation. Mr. Heather said that so low a holding would call for very serious consideration. Mr. Dodds said that he was doubtful whether Hazeltine could consider that so small a holding was worth bothering about: As a newcomer to these pool negotiations, he felt that the secrecy of the negotiations made cooperation difficult, though he realized the difficulty of having a discussion with 15 parties round the table simultane-

432 ously. Mr. Dale-Harris said that experience had shown that round table discussion with many parties were impracticable—instancing the experience of the Marine Radar Pool. He could not give names of the other parties as not all had yet signed."

Do you remember that discussion?

A. Just generally.

433 By Mr. McConnell:

Q. When you said that you were doubtful whether Hazeltine could consider that so small a holding was worth bothering about, were you sort of threatening to take your patent out of the pool if you didn't get more money?

A. Well, I will stand on the statement. You can draw any implication that you wish.

Q. Well, would you draw that implication? Is that the implication that you wanted drawn from your statement?

A. Well, I will say that's not inconsistent with an implication which I thought might be drawn.

The Court: You wouldn't have minded if somebody did draw that, no.

By Mr. McConnell:

Q. (Reading.)

"Mr. Heather asked whether the arrangements were rigid or whether there was room for negotiation, to which Mr. Preston replied that there was not much room for elasticity because of their commitments to
434 other parties, and (on Mr. Heather's saying that the present proposal looked completely unattractive on the face of it) Mr. Dale-Harris asked what share Hazeltine/GEC would want. Mr. Heather said they had not yet formulated a figure, as they had preferred to have a talk with E. M. I. first. In reply to Mr. Cornock, Mr. Dale-Harris said that the expected number of licensors was seven or eight.

"Mr. Dodds said that G. E. C./Hazeltine had jointly had about 16 per cent of the previous Pool."

Is that a true statement, that you had jointly with G.E.C. had about 16 per cent of the previous pool?

A. I don't have any present recollection, but I will stand on the statement that was made there.

The Court: That's 16 per cent of the income; is that what it means?

The Witness: Jointly, 16 per cent of the net income of the pool.

435 The Court: Which would be 8 per cent of the pool?

The Witness: Which would be 8 per cent of the pool, your Honor, yes.

By Mr. McConnell:

Q. (Reading.)

"And if Color came in, the Hazeltine pointing should be very much greater; but violent fluctuations of participation were unsatisfactory to Hazeltine, since they depend on research and licensing and must be able to plan ahead. A licensor-group should therefore take a longer view: Hazeltine demands in Great Britain had always been very modest, whereas they had about 30 per cent in the U. S. A."

Did you make that statement?

A. I don't remember that specifically, no.

The Court: Well, 30 per cent—there was no pool in the U. S. A., was there?

The Witness: That is correct.

The Court: Thirty per cent of what?

436 The Witness: That's what I don't understand. That's why I said I don't remember that.

The Court: All right.

By Mr. McConnell:

Q. Well, did you mean 30 per cent of the income from licensing in the United States? Is that what you were trying to say?

A. I don't think I was trying to say that at all. I don't have any recollection of any statement alone that line.

Q. Now, the writer of this memorandum says:

"Mr. Heather and Mr. Dodds then said that they would like to join in pooling."

Did you make that statement?

A. That isn't a statement that I would have made, no.

Q. (Continuing):

". . . but they doubted whether the present picture was sufficiently attractive and therefore asked whether

some form of accommodation could be found. Recognizing the difficulty of modifying the formula, Mr. Heather asked whether there was any possibility of a
437 deal between Hazeltine/G. E. C. and E. M. I."

Do you remember that?

A. I remember the general purport of that, yes.

438 Q. (Continuing):

"Mr. Dale-Harris said that this would have to be referred to Mr. Schoenberg."

Who is Mr. Shoenberg?

A. I do not recall his title but he was, I believe, an official of Electrical and Musical Industries; EMI.

(There was a brief interruption, after which the following further proceedings were had herein:)

The Court: I see your former lawyer, Mr. Rathburn. Maybe he can take over.

The Witness: Yes, sir.

Mr. Diggins: I am sorry, your Honor.

The Court: All right. You may proceed, Mr. McConnell.

Mr. McConnell: Thank you, your Honor.

By Mr. McConnell:

Q. This memorandum goes on and says:

"There was then a discussion of the form of counter proposal that might be made to EMI. Finally, Mr. Heather rang up Mr. Preston saying that the present proposals appeared inequitable and unattractive and
439 that a share of about 11 per cent appeared to be the least which would be attractive. It was arranged that there should be a further talk with EMI on November 20th."

Do you remember that taking place?

A. I don't remember that date specifically, but I will accept the date as stated in the memorandum.

Q. Well, do you remember that you were ready to go for 11 per cent of the pool?

A. I do not remember that figure specifically. As I recall, it was for a higher percentage than the 6 per cent.

The Court: I thought it was 8 percent.

The Witness: That was the preceding pool. It would have been 16 per cent, 8 per cent each. Now, the offer was 6 per cent total, 3 per cent each.

The Court: I see: All right.

By Mr. McConnell:

Q. (Reading.)

"Turning to the question of GEC-Hazeltine arrangements in the light of the morning's discussion, it was
440 agreed that the GEC wished to continue the Service Agreement, and that the GEC's royalty payments to the Pool would provide an equitable return (assuming Hazeltine-GEC were accorded terms which justified Hazeltine's patents being placed in the Pool) for the GEC's own use of Hazeltine patents. The Patent Agreement (Agreement (d)) would also be continued if both GEC and Hazeltine became members of the Pool."

Do you remember that being discussed, that you were to become a member of the Pool?

A. I certainly do not. I am very sure that no such discussion took place in my presence.

Q. (Reading):

"It was further felt that if the joint participation were about 10 per cent of the Pool, a 60:40 division of income between GEC and Hazeltine would be about fair. Mr. Dodds said that if Hazeltine's share were less than 4 per cent, and Color television came in,
441 they would want to review the position."

Do you remember making that statement?

A. I said before, Mr. McConnell, I don't remember any one of those details in those statements, and I do not remember that specific detail.

Q. Well, do you think the man that's writing up this is indulging in fiction; he isn't properly stating what took place?

A. I would say no, with qualifications.

Q. Well, let me ask you this. Did this memorandum come into your possession shortly after these meetings took place?

A. Yes.

Q. Did you write back and correct him in any way?

A. I did not.

Q. On this statement?

A. I did not.

442 Q. He goes on and says:

"In the alternative, if Hazeltine and G.E.C. were not both in the Pool, the G.E.C. would like to continue the Service Agreement at 1,000 pounds p.a. and would like the right to use Hazeltine patents, and would be prepared to continue Patent Agreement (d). Mr. Dodds said that if this state of affairs arose, Hazeltine would probably not want to grant G.E.C. a formal manufacturing license but would then undertake not to sue the G.E.C. for infringeemnt."

Do you recall that statement being made?

A. No.

Q. (Reading.)

"There was also discussion of an arrangement by which if Hazeltine received 5,000 pounds on account of Pool income (including refunds of British Income Tax, if any) further payments should be suspended until Hazeltine 'income' reached 6,000 pounds from the Pool

443 —to allow the GEC to recoup the 1,000 pounds p.a. paid under the Service Agreement.

Do you recall that?

A. Yes.

Q. Now, what were they referring to here about GEC's payment into the Pool for royalties? Were they paying royalties on licenses issued to them by the Pool?

A. That is my understanding.

Q. Then there was another meeting on the 20th of November, 1952 at Magnet House, at which Heather, Dodds, Nalder and Cornock were present. Do you recall that meeting?

A. I recall the series of meetings. I do not at this date distinguish in my mind one meeting from the other.

Q. (Reading.)

"Mr. Heather said that Mr. Dodds would be returning to America very soon, and the situation, as it appeared initially, did not seem satisfactory. He had no special comments of a general nature to make on the GEC's position, but he felt that Hazeltine's posi-
444 tion, as non-manufacturers, was special. He was surprised at the large number of points likely to accrue to members other than EMI, Hazeltine and the GEC. Two suggestions had occurred to him, (i) the allocation of a reasonable number of points to Hazeltine in view of their circumstances, or (ii) a special arrangement outside the formal point evaluation to meet the Hazeltine position."

Q. Do you remember making that statement?

A. Yes.

Q. (Reading.)

"EMI then stated that MWT., Philips, Cinetel and Murphy had agreed to join them: they had not yet settled with S. T. C.—nor with Pye, but Pye had played only a subsidiary part in the previous Pool and were only expected to do the same in the new

Pool. Similarly, not much was expected from Ekco or Cossor.

"Mr. Heather said he did not feel it was necessary to argue specially about the relative positions of the GEC and EMI; but if it was desired that Hazeltine
445 should be a member, he felt it was necessary to come to meet them."

Do you recall that statement being made?

A. I do not recall any statement being made about Hazeltine becoming or being a member of the Pool.

446 Q. All these references throughout here to your getting into this pool and your becoming a member, that is a figment of this man's imagination; is that it?

A. I didn't say that, Mr. McConnell. I think it was just a loose use of language.

Q. I see.

"Mr. Dale-Harris then said that he had heard from Mr. Shoenberg that, if the offer could be accepted at once, EMI would offer Hazeltine/GEC a holding in the ratio.

"EMI:Hazeltine/GEC::100:17

"instead of the 100:12 approximately computed previously—it being expected that the total Pool parties' points would be about 200."

Do you recall that?

A. Yes.

Q. (Reading.)

"After a short withdrawal for consideration, Mr. Heather and Mr. Dodds told EMI that each would recommend his company to accept this proposal."

447 Did you recommend that for acceptance by your company?

A. Yes.

Q. And it was accepted, I take it?

A. Yes.

Q. (Reading.)

"Mr. Dale-Harris then said that it was hoped that the income of the Pool would be of the same order as for the A.6 Pool, though the basis for computing royalty would probably be different. He hoped, therefore, that a Committee Meeting of licensor members would meet very soon to discuss proposals for new licensing terms. He thought that other potential licensors were thinking of a royalty of the order of 3 per cent, though he hoped that an even higher figure might be possible. He promised to send Mr. Nalder a draft Agreement covering membership of the Pool, on the same lines as the Agreement with Cinetel.

"The Pool points mentioned during the conversation were as follows:—

448

"EMI	100.
"MWT	13½
"Philips	25
"Hazeltine/GEC	17
	155½."

Do you recall that?

A. I don't recall those specific numbers, no.

Q. Do you recall that the pool points were divided Hazeltine/GEC, 17?

A. I recall that the arrangement with EMI was that GEC and Hazeltine collectively would receive an income which was related to EMI's income in the ratio of 17 to 100.

449 Q. Then it goes on and says:

"The remaining details of the Hazeltine-G. E. C. arrangements were discussed.

"Mr. Heather then said that the G. E. C.'s broad consideration was that if the G. E. C.'s percentage participation in the Pool was equal to their percentage of the market, they had the equivalent of a free license, and they did not want to fall below this. Mr. Dodds said that, on the figure so far given, it would appear that G. E. C./Hazeltine would have eight and one half per cent of the Pool,".

Did you say that on those figures, your company and G. E. C. would have eight and a half per cent of the Pool?

A. I don't recall that specific statement, no.

Q. (Reading.)

". . . and if this income were divided 60:40, this would give Hazeltine about three and a half per cent of the Pool:"

Do you recall that?

A. I recall that figure three and a half per cent 450 as being the final conclusion of what Hazeltine would get from General Electric Company.

Q. And they quote you as saying you would like four per cent, but felt that three and a half per cent was near enough; is that right?

A. I don't recall that.

Q. (Reading.)

"It was finally agreed that the division should be:

"Hazeltine: GEC: 40:60—subject to final confirmation by the Management of the respective companies. A letter authorizing the G. E. C. to put Hazeltine patents into the Pool was drafted, and subsequently signed on behalf of the Parties after confirmation of acceptance by the Companies."

Is that what happened?

A. That is my recollection.

Q. All right. Now, I show you a document which is marked in evidence here as Defendant's Exhibit 46, which purports to come out of the Hazeltine files, and which appears to bear the signature of Jack Binns and Laurence
451 B. Dodds. I ask you if you can identify those signatures?

A. I can.

Q. The Laurence B. Dodds signature is yours, is it?

A. Right.

Q. Did you read this agreement before you signed it?

A. I have no specific recollection, but that is usually my practice.

Q. This document recites:

"Whereas by virtue of two agreements between the Corporation and Company dated respectively"—the Corporation is the Hazeltine Corporation, and the Company is the General Electric Company, Limited of England—

"Whereas by virtue of two agreements between the Corporation and the Company dated respectively the 6th day of April One Thousand Nine Hundred and Thirty-Nine and the twenty-fourth day of July One Thousand Nine Hundred and Forty-Five the Company hold from the Corporation until the Thirty-first
452 day of December One Thousand Nine Hundred and Forty-Nine a sole and exclusive license (but not including the right to grant sub-licenses) under all present and future patents belonging to the Corporation relating to Receivers for broadcast radio and to television transmission and reception as therein set out.

"And Whereas by a further Agreement between the Corporation and the Company dated the Sixth day of April, One Thousand Nine Hundred and Thirty-Nine the Corporation granted to the Company rights inter

alia to utilize the said Patents for the purpose of securing entry as a Licensor into any British Wireless Broadcast Pool which might be formed or otherwise to deal with the said Patents by way of granting sublicenses thereunder."

Is this a true recital of what had occurred?

A. I would prefer to let the document speak for itself.

453 Q. Well, you signed the document.

A. I signed the document.

Q. When you say you prefer to let the document speak for itself, do you mean by that statement that you are not quarreling with the document, that you are not taking any different position?

A. That's right.

Q. Then it recites:

"And whereas a British Wireless Broadcast Pool was duly formed and the said rights were duly exercised by the Company and said further Agreement was by agreements between the Corporation and the Company dated the 24th day of July, 1945, and the 25th day of June, 1948, extended for additional periods of three years and one year respectively and is due as a result thereof to expire on the 31st day of December, 1948.

"And Whereas the aforesaid British Wireless Broadcast Pool has terminated or is about to terminate and
454 negotiations are now in progress for the formation of a new British Wireless Broadcast Pool (hereinafter referred to as The New Pool).

"Now It Is Hereby Mutually Agreed between the Parties as follows:

"1. For the consideration hereinafter mentioned the Corporation hereby grant unto the Company the

right to utilize the Hazeltine Patents hereinbefore referred to for the purpose of securing entry into the New Pool on such terms as the Company may deem proper or otherwise to deal with the said Patents by way of granting sublicenses thereunder for the purpose of the New Pool.

"2. As consideration for the rights granted by the Corporation to the Company hereunder the Company shall pay to the Corporation 50 per cent of all sums received by the Company from the New Pool by way of royalties upon the combined Patents of the Corporation and the Company in the said New Pool."

Now, pursuant to this agreement, did Hazeltine and
455 GEC put their patents in the New Pool?

A. The Hazeltine Company did not. The General Electric Company did.

Q. Hazeltine didn't put their patents in the pool?

A. No.

Q. They received royalties from the pool, didn't they?

A. No.

Q. Well, now, did GEC put the Hazeltine patents in the pool?

A. Yes, and you know that, Mr. McConnell. There is no use quibbling on words.

Q. You are quibbling with me, I think.

A. No, I am not.

Q. Your patents got into the pool and you got the money from the patents out of the pool, didn't you?

A. No, we did not.

Q. Directly or indirectly through GEC?

A. We got money from GEC. We of our own knowledge don't know where GEC got its money. We can presume it got it from the pool.

456 Q. You have difficulty in understanding where the money came from that you got from the pool?

A. We didn't get money from the pool.

Q. All this talk that we have just been through and your negotiations where you get a larger rating and a larger point number, and a larger participation in the pool—that didn't give you any knowledge that you were getting money out of that pool?

A. I didn't say we didn't get any knowledge. I say we did not get money from the pool. We got money only from the General Electric Company under our agreement with the General Electric Company.

Q. I see. Let me ask you this. GEC didn't give you any money they didn't get out of the pool, did they?

A. I have no knowledge of that.

Q. Didn't you get a statement, an accounting from them, of what they received from the pool?

A. Yes.

Q. Sure. Now, I show you a document which is in evidence here, as produced from your files as Defendant's
457 Exhibit 41, which purports to be an agreement made the fifth day of September, 1933, between Hazelpat, Limited, a company incorporated in England. What was the Hazelpat Company?

A. I have no direct knowledge.

Q. Well, do you have any indirect knowledge?

A. All I have is hearsay.

458 Q. Well, let's have the hearsay. What was it?

A. Well, even the hearsay is very incomplete. To the best of my knowledge, that company had been created and had gone out of existence before I ever became associated with Hazeltine or any of the Hazeltine companies.

I do know that it was a company formed in Great Britain in which Hazeltine Corporation had an interest.

Q. Well, all I want to ask you about this document is—and see if you can answer—is, was this contract at any time terminated, or did it terminate by its terms, and the patents

which are covered by it become again free to be licensed to General Electric Company, Ltd.?

A. I don't have any knowledge of this subject.

Q. Well, you do know that at some subsequent time, the Hazeltine patents were licensed—were turned over to GEC; you know that, don't you?

A. I know that; yes, sir.

Q. And you undertook to enter into an agreement involving those patents free and clear of any relationship of Hazelpat, didn't you?

459 A. To the best of my knowledge, no consideration was given to Hazelpat. I don't know whether it was in existence or not at the time of these pools.

Q. I didn't ask you about your consideration. I just asked whether or not you don't know, as a practical matter, that all relationships between Hazeltine and Hazelpat had terminated before you went into an arrangement with GEC?

A. I don't know that.

Q. You don't know?

A. No.

Q. As far as you know, you may still have your patents in Hazelpat; is that it?

A. I don't suppose there is any point in playing games.

Q. No, I don't think so—

A. To the best of my knowledge, Hazelpat had become a dormant inactive company. It was not operating. Whether it was formally dissolved, and when it was formally dissolved, or if it was formally dissolved, I don't know.

Q. I show you a document which has been marked in evidence here, as produced from your files, as Defend-
460 ant's Exhibit 47, and I ask you to look at it—it is supposedly a Xerox copy—and I ask you whether or not you signed the original of it? That is your signature that appears on the bottom of the paper?

A. No, it is not.

Q. It isn't?

A. No. In fact, it indicates it is not. It has a small "s" and a slant. All the signatures have been in the common hand.

Q. Well, "L. B. Dodds, Vice President"—is that your signature or isn't it?

A. That is not my signature, Mr. McConnell, no. Somebody wrote the name "L. B. Dodds" in there.

Q. All right. Did you sign the original of the document? Can you tell us that?

A. I have no recollection. But on the other hand, I have no reason to believe that I didn't.

Q. You think the signature that appears on here is somebody conforming this?

A. Definitely.

Q. With an original?

A. Definitely.

461 Q. It purports to be signed by Mr. MacFarland, President, and you as Vice President.

This document recites:

"(b)"—

Well, it recites:

"Whereas four agreements were entered into between the Company and the Corporation"—

And again, the company is the General Electric Company of England and the Corporation is your company, the Hazeltine Corporation.

"Whereas four agreements were entered into between the Company and the Corporation on the 6th day of April, 1939, relating to the following matters, namely:

"(a) A license from the Corporation to the Com-

pany under certain Letters Patent (hereinafter referred to as 'the License Agreement').

462 "(b) The right for the Company to utilize the Patents the subject of the said License for the purpose inter alia of securing entry into any British Wireless Broadcast Pool and for carrying on business in radio and television (hereinafter referred to as 'the Pooling Agreement')."

Do you recall that you authorized the use of the Hazeltine patents by the company, the General Electric Company for use in the British Wireless Broadcast Pool?

A. I have so testified repeatedly.

Q. Do you recall some difficulties that you had over the Hazeltine patents in Eire, Ireland?

A. I don't recall any difficulties over the Hazeltine patents. I recall that there arose some confusion as to who had the rights to the Hazeltine patent in Eire.

Q. I show you a document which is marked in evidence, because it is produced from your files, as Defendant's Exhibit 72, which purports to be a letter by you, written by you and sent to Mr. A. F. Cornock of the patent depart-

463 ment of the General Electric Company in Wembley, England, with reference to Hazeltine patents in Eire under date of June 11, 1951, and I ask you if you wrote and sent that letter?

A. I did.

Q. And what was the occasion for writing this letter?

A. May I read it?

Q. Yes.

A. I believe the occasion is rather well and definitely spelled out in the letter. It was a dispute as to the division of territory between Continental Europe on the one hand, Great Britain, Northern Ireland and Eire on the other hand.

Q. Well, you wanted to get your patents released from the pool, didn't you, so that you could license them in Ireland.

A. No.

Q. You didn't want that? Weren't you requesting of Mr. Cornock advice as to whether or not those patents were included in the pool?

A. Yes.

Q. And you got a letter back from him, didn't you,
464 under the date of the 28th of June, 1951, which is taken from your files. It is in evidence here as Defendant's Exhibit 74.

I ask you whether or not you did receive that letter back, the original of it, rather, from Mr. Cornock.

A. I did.

Q. In this letter, Mr. Cornock states:

"As promised in my letter of June 15th, I have had a word with Mr. Macqueen about the difficulties you have run into in Erie, and have re-read our Agreement with the Members of the A.6 Pool, and the A.6 License, to see exactly what our commitments are.

"Under our main Agreement with the Pool, which is dated the 31st August, 1948, and of which I sent you a copy recently we make the following representations and give the following undertakings:"

Now, had he sent you a copy of the main agreement with the pool?

A. I have no present recollection.

465 Q. Well, would you accept his statement here?

A. I would accept his statement.

Q. He says:

"We make the following representations and give the following udertakings:"

"(a) Recital (9) states that we have the right to

grant or procure the grant of licenses from the 1st April, 1948 to the 31st December, 1952 under all present and future patents of the British Isles originating with the Hazeltine Corporation or our own company;

"(b) Recital (10) states that no licenses have been granted (within the Pool scope) under such patents during the relevant period (except for extensions of the A.5 License);

"(c) Clause 1 defines the 'British Isles' to include Eire;

"(d) Clause 18 provides that no license shall, during the period of the Agreement, be granted by any Party except in accordance with the decisions of the Management Committee of the Pool."

466 Now, did you know that prior to this letter, that your patents were in this pool and could not be licensed except in accordance with the decisions of the Management Committee of the Pool?

A. I am not sure whether I did or not. I don't recall. I don't recall whether I knew—and I still don't know—whether in the agreement between the General Electric Company on the one hand, and the Pool on the other, all of General Electric's rights were granted so that they retained no licensing rights themselves.

Q. I am not talking about General Electric; I am talking about Hazeltine patents.

A. Well, Mr. McConnell, we have already stated that we granted the General Electric Company the exclusive right to exploit the Hazeltine patents in the United Kingdom.

Q. I understand that. We have also got a lot of other evidence here which qualifies that statement.

A. And I am asking you now whether or not you knew that during the period of the pool agreement your patents

could not be licensed except through the Management
467 Committee of the Pool?

A. I just answered that question, Mr. McConnell.

468 Q. You don't know?

A. I said I didn't know. I don't know whether I knew. I don't believe I knew. I don't believe I know now.

Q. Well, we are talking now about the A.6 Pool, are we not?

A. I understand.

Q. And you did have in your possession the agreement under which the A.6 Pool was operated, didn't you?

A. I am not sure. We have had copies of some of the Pool agreements.

Q. Well, let me see if I can refresh your recollection.

The Court: Maybe you can do that after the afternoon recess.

(Thereupon, a short recess was had herein, after which the following further proceedings were had, to-wit:)

The Court: You may proceed.

By Mr. McConnell:

Q. When we adjourned, I was about to refresh your recollection as to your knowledge of the A.6 License, the British Pool, I show you a document which is pro-
469 duced from the Hazeltine file, which is marked Defendant's Exhibit 75 and is in evidence under our stipulation under date of November 9, 1949 entitled "Outline of the A.6 License, British Pool," and I ask you if you made that outline?

A. Yes.

Q. Now, when you made that outline you had before you something, didn't you?

A. I had before me a copy of the Pool—

Q. Pool agreement?

A. No, I beg your pardon, this is an outline of the license, A.6 License, granted by the British Patent Pool.

Q. All right, what did you have before you when you prepared that?

A. I say, a copy of the license agreement, not a copy of the Pool agreement.

Q. Now, in this document, Defendant's Exhibit 74, I pointed out to you that no license could be granted by any party except in accordance with the decision of the management committee of the Pool. Do you know how that management committee was made up?

470 A. No, I do not—well, excuse me, I know generally. I do not know specifically.

Q. Well, tell us generally what you know about it.

A. I believe that each of the Pool members had a representative, appointed a representative, and those representatives became this committee.

471 Q. Now, in this outline which you had prepared here, you show as the grantors BTH—that's British, Thompson, Houston Company, isn't it?

A. Yes.

Q. EMI, that is Electrical Musical Industry Corporation?

A. Yes.

Q. GEC, that is General Electric Company of England, isn't it?

A. Yes.

Q. Marconi is Marconi Wireless Telegraph Company?

A. Yes.

Q. Philips, that is the Philips Company of Holland, is it not?

A. I don't believe so.

Q. What is it?

A. I believe it is a British subsidiary.

Q. A British subsidiary?

A. Of the Philips Company of Holland.

Q. And Standard Telephone.

Now, isn't it a fact that those grantors were the members of the Pool, of the A.6 Pool?

A. That I do not know. I will explain why I don't
472 know. It is because they may have been the original members of the pool, but as it has been testified before, that from time to time members were added and dropped. They were the names of the individuals that appeared on the printed form of license agreement issued by the pool; so I think it would be safe to say that they were the members of the pool at the time that license was granted.

Q. All right.

The Court: And the date of that, Mr. McConnell, is what?

Mr. McConnell: November 9, 1949.

The Court: All right.

By Mr. McConnell:

Q. Now, every one of those companies was a producer, manufacturer of radio or television sets, were they not?

A. I don't know.

Q. You don't know that?

A. No, I do not know that and I never did know it. I know that some of them are.

Q. Which ones do you know are?

A. Well, you mean are or were in 1949?

473 Q. Well, were in 1949.

The Court: Were on the date of that instrument, about.

By the Witness:

A. At that time—I am sorry, the only two that I know definitely as of that time were EMI and GEC. The others may have been but I have no direct knowledge.

By Mr. McConnell:

Q. Well, they would be competitors of the Zenith Radio Corporation, would they not, if Zenith had sets to sell in England?

A. I don't know.

Q. You wouldn't think so?

A. I didn't say that. I said I don't know.

Q. Well, they were selling radio and television sets, weren't they?

A. I just answered that question. I said I didn't know except with respect to EMI and GEC.

474 Q. Well, I am talking about those two companies that you said.

A. Those two companies, yes. I misunderstood you. I thought you were referring to all of these companies.

Q. No, I am talking about the two companies that you know about that do produce and sell radio and television sets in Great Britain.

A. All right.

Q. Now, will you go along this far with me, that if Zenith Radio Corporation can get there or was there they would be a competitor?

A. I don't know whether they would or not. I don't know whether they sell the same class of merchandise.

Q. Well, anyway, the determination of whether your patents would ever be licensed to Zenith Radio is going to be made by these grantors in this pool, wasn't it, or their committee?

A. That is not my understanding, Mr. McConnell.

Q. You don't think that is true?

A. No.

Q. This letter, which is addressed to you from Mr.

475 Cornock—now, he is the attorney for General Electric, isn't he?

A. No, he is not an attorney.

Q. He is not an attorney?

A. No.

Q. But he was a manager of their patent department?

A. Yes.

Q. And he says that Clause 18 of the document which you have—had in your possession—

A. Just a minute, Mr. McConnell, I didn't testify I had that in my possession. I testified that I didn't know whether we did or not.

Q. Well, he says in his letter:

"Under our main agreement with the pool, which is dated the 31st of August, 1948, and which I sent you a copy recently."

You still say you did not have a copy?

A. No, I didn't say I didn't have it. Don't twist my words. I said I didn't know whether we had it or not. I don't have any present recollection of it.

Q. I see.

476 Well, he quotes that pool agreement, which he says you have a copy of, as saying that:

"Clause 18 provides that no license shall, during the period of the agreement, be granted by any party except in accordance with the decisions of the management committee of the pool."

Now, didn't you have in your files a copy of that pool agreement?

A. For the third time, or the fourth time, Mr. McConnell, I said I don't know. I have no present recollection.

Q. You don't know?

A. I have no present recollection of it.

477 Q. Under the interrogatories which were given your Company you were asked to produce copies of the Pool agreements which you had in your possession, and pursuant to that you produced this document, did you not, Defendant's Exhibit No. 52, which purports to be an agreement made the 31st day of August 1948, between these different companies, as constituting the Pool agreement about which I have just been examining you.

Now, look at it and tell us whether or not you did produce it in accordance with that interrogatory?

A. This is a document which was produced in response to interrogatory, however, there is no evidence here—I will put it stronger. I will say that I believe to the best of my knowledge that I never saw this prior to this present discovery proceedings.

Q. Well, you will go this far with me, won't you, that you produced it in response to our interrogatories purporting to be the document called for by the interrogatory.

A. The interrogatories, as I recall, didn't call for
478 any specific document, but we furnished in response to interrogatories all the documents of a category that we had and could find.

Q. All right, we are going to find the interrogatory in due course and we will read it to you and you can qualify it any way that you want.

Now, look at clause eighteen and tell us whether or not that provides that no licenses shall, during the period of the agreement, be granted by any party except in accordance with the decision of the management committee of the Pool.

A. It does not so provide.

Q. It doesn't?

A. No.

Q. What does it provide?

A. It provides:

"No licenses shall be granted by any party hereto for radio apparatus in the British Isles in respect to the period from the 1st of April 1948 to the 31st of December 1952, except in accordance with the decision of the committee, or in the cases mentioned in clause
479 eleven (c), little i and two little ii's."

Q. That is different, is it, from what I read to you?

A. I believe it is significantly different, yes.

Q. Okay.

Well, anyway, will you go along with this statement, that you had granted your patents for disposition by a Pool where a license couldn't be granted to Zenith Radio except in accordance with the decision of the management committee of the Pool?

A. No.

Q. You won't?

A. No.

Q. I show you a document which is marked 78A and B, which is produced from your files and which is here in evidence under those identifying numbers pursuant to our stipulation and ask you to tell us whether or not you prepared and signed that memorandum, the original of it, of which this purports to be a copy?

A. I prepared the memorandum comprising the
480 final three pages of the group of pages which you handed me.

481 Q. Well, how about the rest of it, who prepared the rest of it, or do you know?

A. The first sheet purports to be a letter from Mr. MacQueen of the General Electric Company to me, which I received and read on February 19, 1954.

Q. Well, all I asked you about was the memorandum, and you prepared that, I take it.

A. I so answered.

Q. Now, this purports to be, the date of April 5th, 1954, a report of a conference with Mr. M. M. MacQueen of GEC on April 2nd, 1954, three days before; who were you making that report to?

A. The report indicates that it goes to the file. I was just making a record of it for future reference.

Q. Well, you say here, "This memo is to record the substance of a discussion between Mr. Binns and the writer with Mr. MacQueen of GEC."

Now, who is Mr. MacQueen of GEC?

A. You mean who is he now or who was he in 1954?

Q. Well, who was he in 1954? That is when we
482 are interested in.

A. I don't recall exactly what his title was. He was a member of the—what we call the radio and television department of GEC.

Q. In this memorandum you state, under Paragraph 5:

"Mr. MacQueen feels that the committee does have a practical significance from the viewpoint of the pool members in spite of the fact that EMI permanently holds a majority of the votes on the committee."

Now, what is that committee that he is talking about? Isn't that the same management committee I was just interrogating you about a moment ago?

A. I believe it is.

Q. And the company that has—that permanently holds the majority of the votes on the Committee is EMI, is that right?

A. I don't have any direct knowledge of that.

Q. Well, this is your memorandum that you made at the time.

483 A. This is what Mr. MacQueen told me.

Q. Yes, that is what he told you.

A. Yes.

Q. And Mr. MacQueen was in a position to know, was he not?

A. I would assume so.

The Court: But he might have misled the witness.

The Witness: That is right.

Mr. McConnell: I don't think—Well, I am not going to comment.

By Mr. McConnell:

Q. Who was he again?

A. I said he was a member of the Radio and Television Department, what we would call the radio and television department of GEC. I don't know his exact official title.

Q. All right.

Now, he says here:

"In spite of the fact that EMI permanently holds the majority of the votes on the committee—"

And the committee that he is referring to is the one that I was talking to you about a moment ago, the man-
484 agement committee, wasn't it?

A. The Pool Management Committee, yes.

485 Q. And EMI, that is Electrical and Musical Industries, was a producer and a seller of radio and television sets in Great Britain, was it not?

A. I believe it was.

Q. Well, you know it was, don't you?

A. Now, listen, Mr. McConnell, it was, and a number of years ago it gave it up entirely, and I don't recall the exact year and when it sold out its business. That is the only reason that I am qualifying my answers. I don't remember the exact time when they sold their radio and television business.

Q. And then he says to you, you are reporting him:

"It is Schoenberg's view that EMI has a major patent investment in the industry and that he must protect it against any ganging up by the other members of the Pool which would in any way seriously affect EMI's patent position."

Now, can you tell us whether or not the decisions of this management group, the management committee, were decided by a majority of votes?

486 A. I have no direct knowledge.

Q. You don't know how they recorded their decisions?

A. What do you mean, "how they recorded them"?

Q. Well, they have a meeting of the committee, I take it, and they reach some conclusions. Now, did they do it by a majority vote or a unanimous vote or how?

A. Mr. McConnell, I never attended a meeting of the management committee. I never saw any minutes of the management committee, and I don't have any knowledge of how the management committee operates.

Q. Well, now, as I recall, you objected to this management committee in the Pool, didn't you?

A. No.

Q. In your previous discussions?

A. No.

Q. Didn't I just get through taking you over a memorandum where you voiced your objection to that method of doing business, of having a management committee 487 made up by the number of points on their patents?

A. Well, that is a different thing. I may have raised some objections to the manner in which the management committee was constituted.

Q. Well, you knew something about it then, didn't you?

A. I—

Q. You weren't completely walking around in the dark on the management committee?

A. I never suggested that.

Q. You knew what there was there. There was a management committee, and you knew how it was composed, didn't you, when you were having those negotiations over there?

A. I testified it was composed by the appointment of a representative from each member of the Pool. I knew that.

488 Q. You quote him as saying:

"There are 12 firms in England doing about 80 per cent of the television business, each of which has a volume such that it will reach the maximum 25,000 pound royalty ceiling in the television license agreement. The remaining 20 per cent of the television business is scattered among a number of smaller companies. Mr. MacQueen said that the principal television sets now on the market in England were a 14-inch table model having an average manufacturer's selling price of 31 pounds, which he thought represented about 70 per cent of the TV receivers sales, and a 17-inch table model having a manufacturer's selling price of 38 pounds. He gave an estimate of the A.7 pool income based upon two assumptions; A, that the TV business continues approximately on the 1953 level of one million sets per year; B, that the three outstanding nonlicensed
489 firms will accept the pool license, namely, Kosser, Ferguson and Plussy. On the foregoing assumption, MacQueen estimates the pool income at 450,000 pounds gross per year before taxes. Based on joint Hazeltine —GEC take of approximately 8 per cent of the pool income and the 60-40 disposition between GEC and Hazeltine respectively, this would yield to Hazeltine approximately 12,000 pounds per year."

Now, based on the language, "based on the joint Hazeltine—GEC take," that is your language, isn't it?

A. I don't know whether it is my language or whether I was repeating what Mr. MacQueen said.

Q. Well, you wrote this.

A. That is right.

Q. That was your take from the pool, wasn't it?

A. That was General Electric's take from the pool on behalf of both of us.

Q. Well, yes. You say, "a joint Hazeltine—GEC take," but the joint Hazeltine—GEC take, you say, is approximately 8 per cent of the pool income. That is what it
490 was, wasn't it?

A. I don't have any independent recollection. In fact, that isn't in accordance with my recollection. There is a discrepancy there which I can't reconcile at the moment.

Q. You think you wrote this down wrong?

A. I don't know whether I did or not, or I don't know whether I wrote down what Mr. MacQueen said and what he said was wrong.

Q. You think you would like to amend that language now?

A. No.

491 Q. Now, you say:

> "It was agreed that the writer would supply Mr. MacQueen with the following information; one, the numbers of British patents which may have issued on the Hazeltine constant liminous and shunted monochrome development or other important color cases. Two, attempt to obtain from RCA information as to the duration of their patent agreement with EMI."

Now, did you go and see RCA and attempt to find out the extent of their patent agreement with EMI?

A. I do not recall. I have had conversations with representatives of RCA on two or three occasions, but I don't remember exactly what times they were. I believe the correspondence dealing with those conversations are in the record. You have copies. I would be glad to confirm the dates, but I don't recall independently now the dates of those meetings.

Q. All right, did you ever, at any time, can you recall, ever, at any time, talking with anybody at RCA about
492 the duration of their patent agreement with EMI?

A. Yes.

Q. Who did you talk with?

A. Well, over the period of years, I recall at least one conversation with Doctor B. E. Shackleford. I recall at least one conversation with Mr. M. E. Karns, and I recall a conversation with Mr. Henry Johnson, but I don't recall which of those conversations dealt with this particular point.

Q. Well, did you find out from any of them, Karns or Shackleford or anybody else at RCA what was the duration of their patent agreement with EMI?

A. I believe I did, though I don't really—

Q. You don't recall?

A. I don't recall what it was because I don't recall on what date that I had, and I believe that the RCA agreements with EMI have been renewed from time to time; so depending on when I inquired, why, the information I would get would be a different date.

493 Q. Well, did you find out that EMI had the handling of the RCA British patents in this Pool in England?

A. Well, to the best of my recollection, the RCA patents were not in the British Pool. I will qualify that; the RCA patents having dates after 1945.

Q. Well, up to 1945 RCA had granted an exclusive license to EMI to use their patents, isn't that true?

A. Up to 1945?

Q. Covering patents up to 1945, yes.

A. That isn't my understanding.

Q. What is your understanding?

A. Well, I am not too sure of its preciseness. My understanding was that RCA had granted exclusive rights under its patent to another concern. I think it had Victor in its name, which EMI subsequently bought.

494 Q. In other words, because they went in through the Marconi Company into EMI you say they don't have them?

A. No, I didn't say that.

Q. Well, they did have them, didn't they, whether they got them through Marconi or His Master's Voice, or any other way, they had them on all patents issued prior to 1946. They had an exclusive license under them, didn't they?

A. They did for a period. When they acquired that, I do not know.

Q. And those patents, at least you will agree with me, were in this Pool, weren't they?

A. Right.

Q. And then in addition to that they had an arrangement, RCA did, with EMI whereby EMI gave every licensee under this Pood a free license under the RCA patents, isn't that true?

A. I don't know whether EMI did that or not. I believe EMI had the right to do that.

Q. You don't know whether they actually did it?

A. I have no knowledge.

Q. Well, will you go this far with me; that a 495 licensee under that Pool had a right to get a free license from RCA through EMI?

A. For a period of time, until that arrangement between EMI and RCA terminated. I believe that is right.

Q. All right.

Now, did you find out when that arrangement terminated?

A. Yes, I did.

Q. When was it?

A. I don't remember.

Q. You can't remember that?

Well, it must have been sometime after 1954?

A. Yes.

Q. I show you a document which is marked Defendant's Exhibit 82, which is in evidence here by stipulation as

being produced from your files, a letter under date of September 25, 1957, addressed to you and signed "Arthur." I assume that is Arthur Cornock, and I ask you whether or not you received that on or about the date that it bears.

496 A. That is Arthur Cornock and I received it and read it on October 2, 1957.

Q. On page 2 of this letter—wait, I will start back on the last paragraph on the first page, he said:

"Topham considers that the extended licenses should be accepted by the trade without any real difficulty."

Now, Topham was manager of the British Pool, was he not, at that time?

A. I believe so.

497 Q. (Reading.)

"And since he is the person in most direct contact with licensees and hears such grumbles and complaints as they wish to make, he should be in as good a position as anyone to forecast the trade reception of the proposals. On the face of it his view seems to me to be reasonable. The modifications and royalty rates should go some way toward mollifying those of the medium and smaller licensees who have considered themselves rather hardly used in the past so that the chances that they will decline to extend their licenses has been reduced. About half of the large licensees whose royalty payments reached the quasi feeling will accept licenses since they are members of the Pool, and it does not seem likely that the concessions to the smaller licensees will cause the remaining large licensees to stage a strike, since even on the modified figures the insurance policy obtained by taking a
498 license is better value than the gamble of fighting infringement actions when they are in fact using at least a few of the patents under which the Pool is

willing to license them. Of course, one can always meet the man who thinks that if he is cussed enough he will manage to get something more, but we do ourselves consider that the revised licensing proposals are inherently reasonable, and that reason will ultimately prevail. All in all, therefore, we ourselves think that Topham has weighed up the position correctly. We should begin to get a fair picture of the trade reactions in about two months time, and I will try to let you know as soon as we have a Pool meeting which gives us a preliminary idea of how the picture is shaping up."

Did he write and tell you how the licensing was progressing?

A. I don't have any recollection.

Q. What did he mean by the insurance policy obtained by taking a license—

499 A. I don't know what—

Q. —is better than the gamble of fighting infringement actions?

A. I don't know what was in Mr. Cornock's mind.

Q. Well, did he, by any chance, mean by that that it assured them against freedom from an infringement suit no matter whether there was any merit in it or not?

A. I would be very much surprised if that was in his mind.

Q. You don't think he had that in his mind?

A. No.

Q. What do you think he had in mind?

A. I don't have any idea what he had in mind.

Q. Well, wasn't it a fact that this Pool had thousands of patents at its disposal on which it could bring an infringement suit against anyone who didn't join it?

A. I am definitely sure that that is not so. I would be

surprised if they had six patents on which they could bring infringement suits.

500 Q. You think all the rest of them were no good? Is that right?

A. Not so good, but not used in British television receivers.

Q. I see.

Well, if you took a license under the Pool, you took a license under every patent that the Pool had, didn't you, whether or not you used it in the set or not? Didn't make any difference whether you used it in the set, did it?

A. What do you mean, does it make any difference whether you used it or not? You had a right to use it. You had the right to use as many as you wanted.

Q. Whether you used it or whether you didn't use it, you paid a license fee on your set and you were covered by all the patents in that Pool and they could sue you on any one of them, couldn't they?

A. Oh, no, they couldn't.

Q. All right, we don't agree.

A. Definitely not.

501 Q. I show you a document which is produced from your files, which is Defendant's Exhibit No. 84, which is a letter written under date of April 13, 1960, to you on the letterhead of the General Electric Company. I can't read the signature on it. Maybe you can help me.

A. A letter from Mr. McQueen.

502 Q. He's the same gentleman we have been talking about a while ago.

A. Yes. Do you want me to read it?

Q. You received the letter?

A. I received the letter and read it on April 19, 1960.

Q. He said in this letter:

"Since I wrote to you a tentative plan has been produced by the pool manager, a Mr. Chapel, and

I have discussed this with him. This new plan involves many changes affecting both licensors and licensees, and as I see it it will put both the GEC and Hazeltine in a less favorable position. And at this juncture, I have not encouraged the pool to think that it will have our ready acceptance. In any case, we would have to have your agreement before making any commitment which would involve your company."

Now, is that true that they had to have your agreement before they could do anything with reference to this pool?

503 A. I believe, as a matter of law, no. Perhaps as a matter of moral practice, yes.

Q. Well, you were partners with him, weren't you?

A. No.

Q. You weren't?

A. No.

Q. Well, we will get to that and see whether you weren't.

A. Yes.

Q. (Reading.)

"In the meantime, Mr. Chapel and I have had an interesting discussion with three people representing the RCA International licensing interests, and they have made their position quite clear."

Do you know what that was?

A. No. I have no idea.

Q. Then he goes on to say:

"I am going away after Easter on a short holiday and will be back in London on May 9th; Monday, the 9th of May. Mr. Chapel is also going away and
504 will not be available until a week later. If, therefore, it were possible for you and/or Mr. Ruestow to visit us during the week commencing the 16th of May, that would be convenient to us."

Did you make a visit over there at that time?

A. Approximately that time, yes.

505 Q. All right. Now, what was the purpose of your going over there at that time?

A. The purpose of going over there at that time was either—I will put it this way; it was to negotiate with the General Electric Company as to the possibility of renewing the contractual relationship with them, to permit them to continue to include Hazeltine British patents in the British pool.

Q. Was that with reference to the A.8 pool?

A. I think so. I am not sure. These numbered pools confuse me a bit. At least one of the pools—instead of forming a new pool, the current pool was extended for a short period. And I don't frankly remember whether this visit was in connection with an extension of A.7 pool, or the consideration of a new A.8 pool.

Q. Well, the A.8 pool is the pool that is now functioning, is it not?

A. That is my understanding.

Q. You are not sure whether you were over there in 1960 on that pool or some other pool; is that it?

A. I testified just exactly the extent of my recollection.

Q. Well, what was the outcome of your negotiations 506 there in 1960? What occurred?

A. Well, there was a—as I recall, there was a tentative agreement reached on behalf of Hazeltine Corporation and GEC and, frankly, I don't remember the terms of it. And before that agreement was consummated, my responsibilities and activities in the field were discontinued.

Q. Well, do you know whether or not you got the Hazeltine patents in the pool?

A. I believe—it is my best belief that the General Electric Company did continue to include the Hazeltine British patents in the pool.

Q. I show you a document which is marked Defendant's Exhibit 79 which was produced from the files of Hazeltine so, under our stipulation, it is in evidence, and which is entitled "License Abstracts," and I ask you to examine that and tell us, if you will—or if you can, who made those abstracts?

A. I made these abstracts.

Q. All of them?

A. I am not sure. This goes back some sixteen years. I know I made the first one. I will accept it, at least,
507 because my dictating initials appear on it.

Q. What is that one?

A. That is the outline of the British pool agreement of 1948.

Q. What is the number of it? What pool is that?

A. I don't know. Somebody has marked it here in pencil A.6.

Q. A.6?

A. The second document is entitled "Outline—A-6 License." That also contains my dictating initials.

The third one is an outline of the British A-7 pool agreement. That contains my dictating initials.

I believe I prepared all of these abstracts.

Q. Can you tell us what the purpose was of preparing these abstracts, if any?

A. I believe it was just for my own information.

Q. Now, the first one of these in 1948 outlines the British pool agreement of 1948.

In paragraph 7, you say in your outline, and I
508 am quoting:

> "No Licenses granted for importation of sets nor of components exceeding in value 10 per cent of retail list price."

Did you get that out of the license?

A. I assume that is an abstract of what I got out of the license.

Q. Well, can't you go any farther than to make an assumption? After all, this is your work.

A. I said I believe it is an abstract I got out of the license. If anything is abstracted, the accuracy is sacrificed for brevity. It is incomplete. It is just a topical outline.

Q. I don't think I asked you whether it was complete. I asked you whether or not you got it out of the license.

Now, the next one purports to be the A.5 pool. Didn't you tell us that you had never seen the A.5 license pool?

A. No.

Q. You didn't say that?

A. No. I said I believe I said that I didn't have any recollection of that.

509 Q. Well, you say in the A.5 license pool, under "4-Licensee, a- not to export without written consent of grantor;

"b- not to use equipment without written consent of grantor, if not made in licensed territory."

Did you get that out of the license agreement?

A. Well, your Honor—excuse me. I thought you referred to the pool agreement. That is not a pool agreement. That is a license agreement issued by the pool, is it not?

Q. The A.5 license, yes.

A. Yes.

Q. Am I misleading you here, or what?

A. I understand you to say the A.5 pool.

Q. Well, you put it here A.5 license (pool).

A. Yes.

Q. That is the way you describe it.

A. Yes. But the A.5 license from the pool.

Q. From the A.5 pool.

A. All right.

Q. Now, in the A.6 license, which is November
510 9, 1949—

The Court: I think there is an unanswered question. Did he get this out of the license?

Mr. McConnell: I think you are right, your Honor. I think you are absolutely right.

The Court: You go off into the side streets, and you forget about where you were heading.

Mr. McConnell: That's right. A lot of lawyers do it, and I am no exception to the rule.

By Mr. McConnell:

Q. (Reading.)

"4-Licensee;

"a-not to export without written consent of grantor;

"b-not to use equipment, without written consent of grantor, if not made in licensed territory."

Did you get that out of the license agreement?

A. I believe that is an abstract of what I got out of the license.

Q. In the A.6 license, which is dated November
511 9, 1949, your abstract shows:

"4. Licensee agrees:

"(a) Not to sell imported receivers."

Did you get that out of the license agreement?

A. I believe that is an abstract of what I got out of the license agreement.

512 Q. The A.7 pool, your abstract under date of February 4, 1954, recites:

"7. No license granted to import radio apparatus or to deal in such apparatus containing imported components exceeding in value 10 per cent of the retail list price."

Did you get that out of the license agreement?

A. I believe that is an abstract of what I got out of the license.

The A.7 license of which you made an abstract, Paragraph 4, provides:

"Licensee agrees:

"(a) Not to sell any TV receiver not made in territory of Agreement—i.e., incorporating imported components of a value exceeding 10 per cent of the retail list price."

Did you get that out of the license agreement?

A. I believe that is an abstract of what I got out of the license agreement. I think those last two were both A.7.

I think the question should indicate one is with re-
513 spect to sound receivers and one is with respect to television receivers.

Q. All right. I am just getting to the other one. You entitled this "Abstract of A7-S License (British Pool)."

And in No. 4, you state—this is under date of June 22, 1954.

"Licensee agrees:

"(a) Not to sell imported receivers except by permission."

Did you get that out of the license?

A. I believe that is an abstract of what I got out of the license.

Q. Then an abstract of A7-T license (British Pool), your note is the same:

"(Same as A7-S License except in substitution of 'Television Receivers' for broadcast sound receivers throughout and except Paragraph 4 (c) below.)"

4 (c) has to do with payment of royalties. Is that a correct abstract of a license which you examined at that time?

A. I will accept the statement in there.

514 Q. I show you a document which is here in evidence as Defendant's Exhibit 80, which purports to be a letter written by you under date of June 22, 1954, to Mr. M. M. MacQueen of the General Electric Co., Ltd. It purports to be a copy of a letter you have written. I ask you if you wrote the original and sent it on or about the date that bears?

A. I believe this is a copy of a letter which I wrote to Mr. MacQueen.

Q. What was the occasion for your reviewing pool licenses?

A. Just to keep informed.

Q. Well, you say here:

"Belatedly I have had an opportunity of reviewing the A7-S and A7-T Licenses of both the first and second editions. Copies of the first edition were sent by Mr. Cornock last September, while you will recall that you left copies of the second edition with me during your visit in April."

Had Mr. Macqueen been over to see you in the States in April?

515 A. I have no present recollection, but I will accept the statement in the letter.

Q. Well, do you recall discussing with him the subject of licenses by the pool?

A. No, I do not.

Q. You don't know why he left you a copy of the license?

A. I don't know. I suppose for my information.

Q. So you would know how your patents were being licensed by the pool, wasn't that it?

A. No, I don't think that is it.

Q. You don't think that is it?

A. No.

Q. I show you a document which bears Defendant Exhibit No. 81, which comes out of your files, which is on the letterhead of the General Electric Co., Ltd. of England, under date of 8th May, 1956 on the subject of Broadcast Licensing Pool in Great Britain, addressed to you and signed by Cornock.

I ask you whether or not you received the original of that letter on or about the date that it bears?

516 A. I received and read the original of this on May 11th, 1956.

Q. In this letter, Mr. Cornock says:

"The present Broadcast Licensing Pool in Great Britain will, as you will remember, expire on the 31st December, 1957. We have from time to time discussed the position with Mr. Heather and Mr. Macqueen to weigh up the way it has been developing, as you will know from your talks with them during the last two or three years; and at the end of a discussion last Friday Mr. Heather asked me to write to you to summarize the picture as it appears to us at present and to ask for the views and comments of the Hazeltine Corporation. Since the best tactics might be conditioned by the strength of EMI in the next Pool, this letter begins by setting out the considerations that lead us to think that EMI are likely still to have the strongest individual position in the next Pool."

He says:

517 "We assume that the next Pool will probably last for five years."

Now, do you know whether or not the pool, the following pool was for a period of five years?

A. I think it was not, it is my recollection.

Q. How long do you think it was?

A. My present recollection is that it was for a shorter

period, to be coterminous with the termination of EMI's rights on the RCA patents.

518 Q. Now, he says:

"We assume that the next Pool will probably last for five years. It is unlikely that Color TV broadcasts will, at the earliest, come into being before half of the life of the next Pool has expired; and when Color broadcasts have begun, Color receivers will not, at the most, account for more than half the value of the turnover in TV, and probably substantially less. Color will, at most, therefore, not account for more than one-quarter of the revenue of the next pool.

"EMI's own earlier patents on TV (i.e., patents not arising from RCA) have been the main patent strength of the present Pool. The more important of these patents are due to expire within 12-18 months unless extended. EMI express themselves as fairly confident of getting several (say two or three) years' further extension of these patents (on the ground of belated loss resulting from the war). The possibility
519 of such extension seems to us somewhat speculative, though not impossible.

Then he goes on to say:

"From the foregoing assessment, two points appear to us to emerge:

"(i) EMI's position in the financially dominant section of the next pool (viz. Monochrome) will be at least as good as that of others (and will be equal to their position if their patents are extended),

"(ii) EMI's position in the 'minority' section of the next Pool (viz. Color) will probably be markedly weaker unless either their patents are extended or they make new arrangements with RCA.

"On this summing up, and giving the necessary

weighting to the Monochrome situation, we feel that it is still EMI, and not some other company, that one should regard as the main target for any negotiations.

520 "The other broad factor that affects the matter, is the question of RCA's position. Such information as we at present have, can be summarized by saying:

"(e) We know that EMI's present agreement with RCA ends in 1960."

Now, what was that agreement?

A. I have no idea.

Q. You don't have any idea at all?

A. No.

521 In other words, this man is writing you something about which you are absolutely and totally ignorant—the RCA arrangement with EMI?

A. Maybe I misunderstood your question. I have no idea about details. I knew, under the agreement, EMI had certain rights on the RCA patents. But the details of that I have never known. Let's see if you don't get some information on the details right here in this letter:

"We also know that even under the present arrangement EMI cannot grant direct licenses under RCA patents".

Did you know that?

A. Well, that depends upon your definition of "know." I do not know that of my own knowledge. I have heard that. I have never seen the agreements.

Q. Well, here is a man that is making a direct statement to you in this letter, and he is a responsible person, and he is telling you directly:

"We also know that, even under the present agree-
522 ment, EMI cannot grant direct licenses under RCA patents."?

Then he says:

". . . though RCA do grant licenses, without additional royalty, to Pool licensees nominated by EMI,".

Now, did you know about that prior to this letter?

A. Again, it depends on what your definition of "know" is. I don't know that. I have heard it.

Q. Well, you knew it after you got the letter?

A. No. I don't know anything that somebody writes me or somebody tells me.

Q. Well, they were your partner, weren't they?

A. They are still people, and they are subject to making mistakes.

The Court: He is very skeptical, Mr. McConnell.

Mr. McConnell: Apparently he is.

By Mr. McConnell:

Q. He says:

". . . though RCA do grant licenses, without addi-
523 tional royalty, to pool licensees nominated by EMI, RCA have in this way, and also by their arrangement for supplying technical information, been pressing themselves into increasingly direct contact with the Pool's licensees."

Did you know about that?

A. I know of nothing other than what is related in that letter, and that isn't my own knowledge.

Q. All right. Then he goes on:

"The inferences we draw from this are: Firstly, that the balance of probability is that EMI will, in future, not have more control over RCA patents than in the present Pool; and, secondly, that RCA may contemplate putting their patents direct into the next Pool rather than through EMI—though this second point is (so far as we are concerned) pure speculation."

Do you know whether or not they ever did put the patents in directly?

524 A. I had no first-hand knowledge. But my information is that they did not.

Q. Well, in the present pool, apparently by inference at least from this letter, you would get the information, wouldn't you, that RCA had put their patents in indirectly through EMI?

A. I think the document speaks for itself. I have no knowledge independent of that document. And it is no point in asking me what I know. There is certain things—statements are made in that letter.

Q. All right. Then on the next page, he says:

"It is, as you know, our hope and belief that Hazeltine and the GEC will again find themselves working together in the next pool."

Had you been working together in the pool?

A. As far as to the best of my knowledge, Hazeltine never worked in the pool at any time.

Q. This is just an aberration of this man, that you were working together with them in this pool?

525 A. I don't know what his basis for that statement was.

Q. But you don't accept it, whatever it was?

A. I certainly do not accept it.

The Court: Again, it is an unfortunate choice of language.

The Witness: I think that is the point, your Honor.

Mr. McConnell: If you were writing this letter, you wouldn't use that language, I take it.

This is a good place to stop.

The Court: I think so. I was waiting for you to get through with the letter.

Mr. McConnell: Thank you.

The Court: We will convene again at 10:00 o'clock tomorrow morning.

(Whereupon, an adjournment was taken to 10:00 a.m., of the following day, Wednesday, February 19, 1964.)

526 * * (Caption—59-C-1847) * *

Before The Hon. Richard B, Austin,
Wednesday, February 19, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

527 The Clerk: Case on trial.
The Court: You may proceed.
Mr. McConnell: Thank you, your Honor.

LAURENCE B. DODDS, called as an adverse witness by the Defendant herein, having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued) by Mr. McConnell.

Q. Mr. Dodds, you made a statement here in court the other day, and I am reading from Page 51 of the transcript. I guess it was your opening statement.

"Now, coming to Australia, Mr. McConnell says that the license granted by the Australian Pool expressly prohibits importation. But one thing that he did not tell your Honor is that he is talking about an 18 year old license. That hasn't been the practice in Australia since 1946, and the record will show that." Do you recall that?

528 A. Yes, I recall that statement.

The Court: Do you want to get back on the stand here with the transcript. Take it with you if you want. It is easier for the court reporter, that is all.

The Witness: Yes.

Mr. Diggins: Do you mind if I stand over there so that I can follow it, too, your Honor?

The Court: Not a bit, no. Get over there. It is Page 51, I guess.

By Mr. McConnell:

Q. Now, I show you a document which is produced from the Hazeltine files, and also produced as Exhibit S as an answer to our interrogatories, marked here as Defendant's Exhibit No. 194, and purports to be a form of license agreement between—form license agreement between ARTS, the Pool, and an unnamed licensee. Have you ever seen that document before?

A. I have seen so many of these documents that I wouldn't be able to identify this one particularly, but I assume that I have seen it.

Q. Well, do you recognize your exhibit number 529 here?

A. Yes.

Q. As produced in response to an interrogatory?

A. Yes.

Q. All right.

Now, I call your attention to a recitation in this document which says:

> "Such license shall be deemed to have commenced on the first day of July, 1953, and shall continue until the 30th day of June, 1958, unless previously revoked as hereinafter provided."

Now, can you tell us whether or not that license was used by the Pool during the period in which it recites that it was used?

A. I don't have any personal knowledge as to whether this license was used or not, Mr. McConnell.

Q. But you will concede that it comes out of your files?

A. Oh, yes.

Q. I show you a document which is marked in evidence here as No. 211. It is produced from your files and
530 pursuant to our stipulation it is in evidence, and purports to be a letter under date of November 17th, 1960, to you, on the letterhead of Electronic Industries, Limited, signed by Arthur Warner, and I ask you whether or not you received that letter on or about the date that it bears, or shortly thereafter.

A. I received this letter and read it on November 22, 1960.

Q. On Page 2 of this letter, Mr. Arthur Warner says: "You will notice under the liabilities that we owed you 23,000 pounds at June 30th and this was sent forward to you on the 9th of August as a draft, $53,214.42."

Can you tell us whether or not your company got that money?

A. I have no personal recollection. I have no reason to believe that it did not.

Q. And that came from the pool, didn't it?

A. That came from Neutrodyne Proprietary, Limited, as a dividend, I believe.

Q. Which they had received out of the Pool, isn't
531 that right?

A. Neutrodyne Proprietary agreement, to the best of my knowledge, had in turn licensed the Pool and did receive royalties from the Pool.

Q. And that payment was on account of those royalties, was it not?

A. It was on account of the profits of Neutrodyne Proprietary, Limited.

Q. Which they got out of the Pool, isn't that right?

A. As I just stated, they received royalties from the Pool under their agreement with the Pool.

Q. I know they received royalties, but what I am asking you is whether the money that you are receiving, this $53,000, isn't the proceeds of what they received out of the Pool.

A. Well, it may be in part the proceeds that they received from the Pool.

Q. That is the best you can do for us?

A. That is the best I can do for you, yes. Neutrodyne Proprietary has expenses.

532 Q. There is nothing said about any expenses in this document, is there?

A. That's not an accounting statement, Mr. McConnell. That is just advising that the money—the dividend is being forwarded.

The Court: Is it a fact, Mr. Dodds, that if Neutrodyne had received no royalties from the Pool, they would have owed you nothing?

The Witness: I think that is a fair statement; yes, sir.

The Court: All right.

By Mr. McConnell:

Q. Now, you have also told us, at page 52 of your opening statement, and I am quoting—do you want to turn to 52. Have you got your place?

A. Yes.

Q. I am quoting:

"It is strange, all that has been said about this package licensing—I have been associated with Hazel-

tine for thirty-four years and until that time, until
533 this time of the negotiations with Zenith, and nobody ever asked for a package license. They didn't want one."

A. That is an error in transcription, Mr. McConnell.

Q. Is it?

A. Yes, definitely.

Q. What is the error?

A. It should have read "nobody asked for anything other than a package license."

Q. Nobody ever asked—

A. Either that or I misstated myself. Either I misstated myself or there is an error in transcription.

Q. Well, it should read that "nobody ever asked for anything other than a package license"; is that right?

A. Yes.

Q. And that is your position, is it?

A. Yes.

Q. I shown you a document which is marked for identification Defendant's Exhibit No. 7, which is produced from the Hazeltine Corporation files, signed "Larry,"
534 written to Mr. Binns. And I assume—it's got the initials LBD; I assume Larry is yourself—under date of August 8, 1951. Did you write that letter to Mr. Binns?

A. I did.

Q. Now, you say in this letter, and I'm quoting:

"As I told you in my last note, we had a date with Redfield of Crosley in Cincinnati yesterday."

What is Crosley?

A. Crosley, at that time, was a division of Avco Manufacturing, a manufacturer of radio and television receivers.

Q. The Crosley radio, did they manufacture that?

A. Pardon?

Q. Did they manufacture the Crosley radio?

A. I believe they did.

Q. (Reading.)

"However, a couple days in advance he phoned me and suggested that I come alone so that Admiral Shea did
535 not attend. Charlie Hogan, whom you may recall was in our Patent Department for a short time, sat in the discussion with Redfield.

"Unfortunately, the discussion did not prove to be particularly fruitful. I reviewed again our 'package' license story. Redfield said that they felt that their 1949 settlement of litigation with Hazeltine had materially aided us in building up our license situation. I told him that we did not believe that that was an important factor since Emerson had not made a similar settlement as was contemplated at that time. I told him that we probably would not have made the deal except that we expected Emerson to make the same deal and clean up the Delaware cases. As it was, the same group of patents were still in litigation in Delaware and there was not too much importance whether there
536 were one or two parties arrayed on the other side."

Now, on the second page of this, page 2, you say:

"Redfield urged that they be permitted to take for a 'sample' of our license for a shorter period than five years to try it out and see if they like it. I said the answer to that was absolutely no."

Was he asking you for a license under less than the whole package?

A. No.

Q. He wasn't?

A. No.

537 Q. (Reading:)

"Redfield then asked that we made a proposal to them based only on the patents on which we had warned them of infringement,"

Now, wasn't that less than the package?

A. Will you continue the rest of the context, Mr. McConnell.

Q. (Continuing:)

"... royalties to be based on the use of these patents."

A. The rest of the paragraph. Read the last sentence of the paragraph, if you will, please.

Q. Will you let me conduct the examination?

A. I think—I understood that's what you are doing.

Mr. Diggins: If the Court please, we have had too many of these things taken out of context. I think the witness is entitled to ask to have the whole paragraph read to him.

The Court: Of course, any lawyer can run his case any way he wants to. It is my understanding that
538 cross-examination, or redirect, or whatever it is with an adverse witness, is then used to show what was asked was taken out of context. That, of course, doesn't do counsel any good, to show that he makes a practice of taking things out of context. And I am sure that Mr. McConnell is aware of that.

He is entitled to ask his question any way he wants to, and you can straighten it out when you get Mr. Dodds back.

Mr. Diggins: Very well.

The Court: Now, do you want the reporter to go back to the question or will you ask it again?

Mr. McConnell: I will ask it again.

The Court: Because there have been two or three interruptions.

By Mr. McConnell:

Q. (Reading:)

"Redfield then asked that we make a proposal to them based only on the patents on which we had warned them of infringement, royalties to be based on the use of
539 these patents."

Did he make that request of you?

The Court: Did Redfield make it?

Mr. McConnell: Yes.

By Mr. McConnell:

Q. Did Redfield make that request?

A. Yes.

Q. Then you say, and I am quoting:

"I said that I would do so but that the rates of royalty for such a license would probably be such as to exceed the $50,000 on their volume of business and that the license would necessarily contain some provisions to insure against litigation as to the use of the licensed patents."

Did you tell him that?

A. I believe I did.

Q. Well, then, you were going to fix the rates on the individual patents that he wanted, so that he would have to pay as much for the one that he wanted as he would for the whole package; isn't that true?

A. That is definitely untrue, Mr. McConnell, on 540 two counts.

Q. That's not true?

A. I will be glad to explain, if you wish.

Q. All right. Then you go on:

"I also said that we disliked that sort of arrangement as being one in which the licensee might be licensed at any given time under one group of patents while we would find it necessary to sue them on other patents, and that such litigation would seriously impair the usefulness of the license."

Is that what you told him?

A. I believe so.

Q. (Reading:)

"As the discussion progressed, this suggestion pretty well dropped out of the picture."

In other words, you talked him out of his request, didn't you?

A. No.

Q. You didn't?

A. No.

Q. All right. I show you a document which is pro-
541 duced from your files as Defendant's Exhibit No. 127, and ask you if you can identify the writing on this document, the handwriting?

A. This is my handwriting.

Q. And what does that purport to be?

A. You say what does this purport to be?

542 Q. Yes. What does the document purport to be?

A. I cannot identify it beyond this. This was a memorandum which was prepared some time before 1944, some 20 years ago. I don't have any recollection independent of what is on the document itself.

Q. Well, were you making an analysis of the situation up in the Canadian Radio Patents, Limited?

A. I'm not sure of an analysis. There are some topical outlines which appear to be the basis of a possible discussion for an agreement, is the way I would interpret this.

Q. Anyway, it is in your handwriting?

A. Yes.

Q. I show you a document which is produced from your files as Defendant's Exhibit No. 172, which purports to be a letter addressed to the Hazeltine Corporation from a Mr. Lemsky of the Trav-ler Radio and Television Corporation of Chicago, Illinois, and a copy of a reply by you to Mr. Lemsky under date of May 10, 1940, and I ask you whether or not you received Mr. Lemsky's letter on or about the
543 time dated, and whether or not you wrote the letter in reply?

A. The answer is yes to both questions.

Q. Mr. Lemsky's letter to you, or to the Hazeltine Corporation—I quote:

"Please send us any information you have regarding Canadian patent rights. We would like to know if we can sell our merchandise and if there is any Canadian law which does or does not permit the sale of same."

And in reply, I quote your—

The Court: Mr. McConnell, who was that from?

Mr. McConnell: That, your Honor, is from the Trav-ler Radio and Television Corporation.

The Court: All right.

Mr. McConnell: Of Chicago, Illinois. Mr. E. Lemsky was writing the letter.

The Court: I was just wondering what company. You have answered the question.

By Mr. McConnell:

Q. Now, I ask you whether or not you made this reply:

544 "This is in answer to your letter of May 2nd with respect to Canada. A group of patents generally corresponding to those owned or controlled by Radio Corporation of America is vested in Canada in the Canadian Radio Patents, Limited. This company has a number of licensees in Canada, and it is my understanding that they will not license sets for importation into their country. They are located at 159 Bay Street, Toronto, and perhaps you can write to them direct. The Hazeltine Corporation patents in Canada are not entirely under our control and consequently licenses can only be obtained by a manufacturer in Canada."

Now, were those facts true?

A. May I see the letter, Mr. McConnell?

Q. Yes, sir.

A. My answer to that is, I apparently believed them to be true in 1940. As of the present time, I do not believe they are strictly accurate.

545 Q. I want to call your attention to a statement which you made under oath in your deposition, which appears at page 180 of this transcript.

A. I have it.

Q. Now, according to the transcript you testified to this question and answer:

"So far as you know, your patents which were in the pool were being licensed under a form as shown by Defendant Dodds Exhibit 52; is that correct?

"A. I believe I previously testified that I had no familiarity or knowledge at all with the A.5 Pool and I believe this was a license issued pursuant to the A.5 Pool agreement."

Did you so testify?

A. I believe so.

Q. Now, you have told us that you prepared the license abstracts which are shown in Defendant's Exhibit 79, is that right?

A. I don't identify that number, Mr. McConnell.

546 Q. Well, look at it.

The Court: Was that the group of abstracts?

Mr. McConnell: That is the group of abstracts, your Honor. He said that he prepared it yesterday.

By the Witness:

A. Yes.

By Mr. McConnell:

Q. Do you find in there an abstract of the A.5 Pool license?

A. Yes, in 1948.

Mr. McConnell: I have no further questions.

Mr. Diggins: If the court please, we are going to call Mr. Dodds in our defense, and rather than try to cross-examine him, which would necessarily be piecemeal and limited to the direct, I would like to reserve all of our questions until we call him in our case so that we can carry it right straight through, if the court will grant us that right.

547 The Court: Leave is granted. It makes sense.

Mr. Diggins: Thank you.

(Witness was excused.)

Mr. McConnell: Mr. Crotty, would you take the stand, please?

FRANCIS W. CROTTY, witness called on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please?

A. Francis W. Crotty, C-r-o-t-t-y.

Q. Where do you live, Mr. Crotty?

A. In Park Ridge, Illinois.

Q. What is your address there?

A. 165 Michael John Terrace.

Q. What is your business or occupation?

A. I am a patent attorney.

The Court: Do you want to sit in the jury box, Mr. Dodds?

Mr. Dodds: I was going to say that Mr. McConnell
548 is right in the line of sight.

The Court: All right, fine, make yourself comfortable where you can hear and see.

By Mr. McConnell:

Q. And you are admitted to practice as a lawyer?

A. Yes, sir.

Q. In the State of Illinois?

A. Yes, sir.

Q. And by whom are you employed and in what capacity?

A. I am employed by Zenith Radio Corporation. I am vice-president in charge of patents.

Q. And how long have you held that position, Mr. Crotty?

A. I have been employed by Zenith since July of 1948. I was in charge of the patent activities from first joining the organization and became a vice-president, I believe, in 1958.

Q. Do you recall having had a conversation with a Mr. Brian McConnell?

A. Yes, I do.

549 Q. And when and where was that conversation, and tell us who Mr. McConnell is, if you know.

A. I think it is Mr. Bryan McConnell, who I understood at the time to be the director or the manager of Canadian Radio Patents, Limited, in Canada. The conference took place in my office at the plant in 1958 or 1959. I am inclined to think that it was midyear of 1959.

Q. And who was present at that conversation?

A. In addition to McConnell and myself, Mr. Curtis.

Q. He is the attorney here representing Zenith Radio Corporation?

A. Yes, sir.

Q. Did Mr. McConnell tell you who he was representing at that time?

A. Yes, he said he was representing Canadian Radio Patents, Limited.

Q. All right.

Now, will you tell us what was said at that conference? If you cannot remember the exact conversation, give us the substance of it.

Mr. Dodds: I object, your Honor, and this is apparently the key to a very broad and far-reaching
550 dispute between the parties.

Plaintiff takes the position—counter-claimant and defendant—that conversations, what Mr. McConnell said, are pure hearsay.

Now, Mr. McConnell, I know, is taking the position that it is a statement by what he terms a co-conspirator.

The Court: During the course of the conspiracy.

Mr. Dodds: Pardon?

The Court: During the course of the conspiracy, I assume.

Mr. Dodds: During the course of the conspiracy, yes.

Mr. McConnell: Yes.

The Court: I mean, if it is after, why, it makes no difference.

Mr. McConnell: No, this is the course of the conspiracy and pursuant to it.

Mr. Dodds: Excuse me until I get some notes.

We submit, your Honor, that there isn't one scintilla
551 of evidence of the existence of any conspiracy involving Hazeltine Corporation.

Mr. McConnell has referred, among other things, to what he calls the co-conspirators involved in this extensive litigation with RCA, but if you look through the issues involved in that case, you will find that it was a totally different picture.

Now, I have a copy of the complaint in that case, in the Chicago case. There was one in Chicago and one in Delaware. It is a very voluminous and wordy complaint and I certainly won't bore the Court with attempting to read

it, but these are some of the things that it alleges, your Honor:

I alleges a conspiracy between Radio Corporation of America, General Electric, American Telephone and Telegraph Company, the Western Electric Company, the Bell Telephone Laboratories, and the Westinghouse Electric Company, all United States corporations, and it alleges—these are the things which that complaint alleges that these companies had conspired to do:

552 One, to monopolize trade in the electronics field, and those concerns, the majority of them, I believe all except the Bell Laboratories, were manufacturers of electronic equipment; so the first allegations are that they had a conspiracy to monopolize that trade, United States trade.

Two, the second assertion and allegation is that they conspired to divide the fields among themselves. And among the fields that are mentioned were communications field, radio telephone, radio telegraph, radio and television manufacture, X-ray and medical apparatus, and vacuum tubes, and a few other secondary products; so it alleges that by these agreements and the conspiracies between them there was an attempt to illegally divide fields, so that each party had effectively exclusive right to manufacture and sell in the field allotted to it.

A third charge was made that they had conspired to monopolize, to establish a patent monopoly and patent licensing by having these half a dozen dominating com-

553 panies in industry all pool their patents into a common pool and to use that collective, coercive force to dominate the patent licensing position. Perhaps I should back up a little bit and compare that—

554 The Court: And that pool was located where?

Mr. Dodds: That pool—it was no formal organization, your Honor. What happened was different ones of the organization administered the patents in different

fields; for example, Radio Corporation of America administered the field in the radio communication field—I am sorry, in the radio and television manufacturing field—

The Court: In America.

Mr. Dodds: In America, all in America, yes.

The Court: All right.

Mr. Dodds:

3. The complaint alleges that these companies had also conspired among themselves and with foreign affiliate and associate companies to achieve the same objects in foreign countries, that is, to monopolize the trade, to divide the fields, and to establish and monopolize the patents and licensing position.

555 It alleges that these parties, these half a dozen major, dominating electronic manufacturing companies had conspired to divide the foreign territory among themselves and against competitors so that their foreign associate companies of the Radio Corporation would manufacture and sell only in its territory and Radio Corporation of America would sell only in its territory.

Lastly, there was the allegation that these six companies had conspired among themselves to provide that the sales of tubes, vacuum tubes, used in all electronic equipment should be made only with illegal restrictions on their use.

Now, the complaint, in this case I guess it is the counter-claim, traces this conspiracy back to 1919, goes up through the 1932 antitrust action by the government against these parties in which there was a consent decree in the District Court of Delaware which permitted them to do cer-

556 tain things and prohibited them from doing certain things and did constitute some rearrangement of their practices. And the counter-claim alleges that these parties were proceeding in violation and in contravention of the consent decree in that antitrust action. And in this case here in Chicago, the Zenith Radio Corporation asserted

damages of fifty-seven million dollars and, finally, as the record has shown, settled for ten million dollars.

Now, let's contrast that to the facts in this case, which I think your Honor is pretty well familiar with by this time.

The Court: Is your point at this point that the conspiracy charged in this counter-claim is not the same conspiracy charged in this other lawsuit?

557 Mr. Dodds: No. 1, the conspiracy charges are not the same, and, secondly, there has been no conspiracy of any sort proved. All that has been proved is, and which I admitted in my opening statement, was that Hazeltine had sold the rights in some of its personal property, in certain foreign countries, to concerns who were using that property in consonance with their laws, and that is not a conspiracy under any decision which is entered by any court in this United States.

And in support of that, your Honor, reference has been made to a fairly recent decision—not decision, action, antitrust action by the Department of Justice against the General Electric Company, the Westinghouse Company, and—no, the Philips Company of Holland, which is one of the great industrial empires, directed specifically, your Honor, and we have a copy of the complaint on the action in that case, directed specifically to prohibiting them from permitting their patents to be in the Canadian Radio

558 Patents, Limited. In that case, consent orders were entered with respect to each of the three defendants, General Electric, Westinghouse, and the Philips Company. We have copies of those consent judgments which permit them to continue to include their patents in the Canadian Radio Patents, Limited. That is the latest action, and that took place within the last couple of years.

The Department of Justice, who is the guardian of our antitrust laws, has permitted these three major, dominating manufacturing companies, not just somebody that does

research, development and licensing—we are not competitors of these people—There might be a little bit more reason. But even those companies, they have permitted them to keep their patents in the Canadian Radio Patents Pool. The only restriction in the consent order was that these companies could not, by concerted action with their Canadian affiliates—and I should mention that in each case the patents were put in the Canadian Radio Patents,
559 Limited through a Canadian affiliate, and there was a restriction that these companies could not, by agreement with their affiliates, in concert, enforce any restriction on the use of their Canadian patents.

560 In other words, the Philips Company of Holland could not enter in agreement with its Canadian Philips Company which prohibited them, for example, from licensing importation. In other words, the Canadian affiliate had to have a free hand, but as long as they exercised their own free hand they were at liberty, they were permitted to continue the use of the inclusion of their patents in the Canadian Radio Patents, Limited.

So that is an example—I cite that because a great deal of emphasis has been put on Canada, but I believe the situation is similar in both England and Australia, so that as long as Hazeltine's only connection with these companies was merely to sell them some of their personal property or some rights in their personal property and had no connection whatever with the operation of any of these pools, which were illegal in their country and perhaps might even be illegal in this country, that hasn't been decided, it is not necessary to decide, there can be no
561 possible basis of alleging a conspiracy between Hazeltine and these foreign companies.

I raise this point because this is at the root of a whole mass of material among this list of exhibits which is included as a great mass of material, of documents taken

from the Zenith-RCA litigation, and the only basis on which they could possibly be admitted would be statements or admissions of co-conspirators, otherwise they are pure hearsay.

The Court: You do concede, I assume, Mr. Dodds, that if there is a conspiracy or if there is evidence of a conspiracy, that anything said by one conspirator during the course of the conspiracy is binding on the other conspirators during the course of the conspiracy?

Mr. Dodds: In general, yes, I agree with that.

The Court: You concede that?

Mr. Dodds: Yes.

The Court: All right, Mr. McConnell.

562 Mr. McConnell: If the Court please, I do not want to argue the whole conspiracy case here and now, nor do I want to argue the Zenith case, which was a different case entirely than the one that we are trying here, although it had many aspects which are in common. The allegations there were broader and involved other companies and different companies, but they did have common aspects insofar as the use of the patents are concerned. Now, we come—

The Court: You do concede that you cannot prove this conspiracy with this kind of evidence unless there is some evidence—

Mr. McConnell: Absolutely.

The Court: I mean you concede that?

Mr. McConnell: Certainly, unless there is a prima facie case of conspiracy or if all the proofs, when they are here before your Honor, do not convince you that there is a conspiracy, you pay no attention to this evidence.

The Court: That is my understanding of the law.

563 Mr. McConnell: We are here in a bench trial, and

I don't want to argue my whole case piecemeal on objections to evidence. I will point this much out at the moment, however, we have introduced here—

564 The Court: Mr. Dodds had said, and I thought you might want to answer, that there is no scintilla of evidence that indicates any conspiracy at this point, as you offer this evidence.

Mr. McConnell: I know that he says that.

The Court: I wondered if you thought there was a scintilla.

Mr. McConnell: Well, I think it is a conclusive case of conspiracy, not just a scintilla. We have their company, on the documents which have come out of their files, in the Pool. They have their patents in the Pool.

The Court: They don't deny that, I don't think.

Mr. McConnell: They have their patents in the Pool and they are receiving the proceeds from the Pool.

The Court: They don't deny that.

Mr. McConnell: And we have the plan of the Pool setup in the documents, and we have in from their files the

565 license agrements which show the restrictions which are imposed by the Pool acting together to restrict any import of American sets into Canada through the devices of refusing to license under any of these patents—this isn't just one individual patent holder, it is all of them acting together to refuse any license under the Pool license to anybody who imports sets into Canada, and it is all in black and white in documents that have come out of their files.

Now, the law of conspiracy, and we have stated it in our briefs, and there is any amount of law on it—

The Court: Let me ask Mr. Dodds this one question at this point: If your patents had got into the Canadian patent pool by virtue of Hazeltine itself putting them in rather than thorugh—

Mr. Dodds: Well, in Canada Hazeltine itself did put the patents in the Pool by an agreement with the
566 Canadian Radio Patents Pool. In that respect the situation is different than in Great Britain and Australia.

The Court: All right, go ahead.

Mr. McConnell: They went in directly by their agreement with knowledge of how they were going to be used, and they get royalty payments back from the Pool. They get the proceeds of what the Pool is doing.

The Court: Is this witness going to go into anything other than Canadian—

Mr. McConnell: No, not for this conversation, no.

The Court: Not with this conversation, but before he gets off the stand, is he going to talk about England and Australia?

Mr. McConnell: I don't think so, no.

The Court: Then we have another problem.

Mr. McConnell: That may be.

The Court: I mean, I just want to settle it now if it is going to come up with this testimony.

567 Mr. McConnell: Not with this testimony, no.

The Court: All right, you may proceed.

568 Mr. McConnell: Now, we have cited the cases to your Honor in our briefs that conspiracy of this kind and under the antitrust laws—and the Supreme Court has said this over and over again—all you have got to show is a plan, the purport of which is to restrain commerce either between states or between foreign countries, joined in by a person with knowledge of what it's attempting to do, participating in the plan. You don't have to find that they all sat around the table and agreed all together this, that and the other thing.

The Court: I know all about conspiracy, I think.

Mr. McConnell: I know you do. I am just stating our position.

Now, we have in the evidence right now, your Honor, a prima facie case of conspiracy on documents which come out of their files, which they can't contest. They are in the Pool. They put their patents in it. They were deriving the profits from it.

Now, his talk about General Electric and these com-
569 panies that have been restrained, he made an absolute misstatement of that to your Honor. Those companies are restrained from imposing restrictions on their licenses such as we are complaining about here.

Mr. Dodds: I have a copy here.

Mr. McConnell: All right. We will get to that in the course of this trial.

The Court: Is it your position, Mr. Dodds, that a conspiracy to prevent the importation of American radios and television sets is not a violation of the Sherman Act?

Mr. Dodds: Oh; no, if there is a conspiracy, no, I would agree that that would be a violation.

The Court: All right. I just wanted to clarify that.

Mr. Dodds: Our whole point is that there is no conspiracy.

The Court: I understand that. I just wanted to be sure what your attitude was, whether if it became apparent that that was the purpose of the conspiracy whether, in your opinion, that was a violation of the Act, that is
570 all.

You may proceed.

Mr. McConnell: May I suggest this, your Honor? I have the law here. I could argue a whole conspiracy case at this time or any time, but it seems to me that the time to argue the conspiracy issue on the law is when we have got our evidence before your Honor and can point out here how this piece fits into that. Conspiracies, as a general

rule, can't be proved by one document and they can't in this case, although this comes pretty close to it. And all I have to show, under the decisions which we have cited in our brief, is a prima facie case and then—

The Court: I mean, it is your position, Mr. McConnell, that you have shown a prima facie case?

Mr. McConnell: Yes, at this moment. That is our position.

The Court: All right.

Mr. McConnell: And if your Honor finds at the end
571 of this case that we are wrong, we haven't proved it, why, of course, this evidence is going to go out. You are not going to take evidence—

The Court: I mean, just so that it is clear to all concerned that this is not offered for the purpose of proving the conspiracy.

Mr. McConnell: No, it is offered for the purpose of showing what they threatened to do to us, but not to prove the conspiracy, no.

The Court: It is a matter of semantics. We have been talking about shades of differences in words ever since we started this lawsuit.

572 Mr. McConnell: If we were before a jury, I could see why we might want to argue the whole position now, at this time. But this is a bench trial. Your Honor is a seasoned trial judge, and is not going to be influenced by any evidence except what is competent evidence. And the courts so hold, in a bench trial the court is presumed to only consider competent evidence.

The Court: I assume that the technical way of doing this, in the event that there appears to be no evidence of any conspiracy, is to take it, in the way of clearing the record, as a motion to strike this testimony which eliminates it completely.

Mr. McConnell: Yes. That is available to him.

Mr. Dodds: May I say a few words.

The Court: Yes.

Mr. Dodds: In the first place, there has been some rather general statements, that the Canadian Radio Patents Limited refuses to license all importation. That just isn't so, and we have evidence to show to the con-
573 trary.

There are certain restrictions on importation they impose, that they impose because of the peculiarity of the Canadian law.

Secondly, in order to show a conspiracy—say, for example, supposing it were necessary to show a conspiracy between Hazeltine and CRPL, as Mr. McConnell suggested; you would have to show in their arrangement some purpose or plan of restraining trade. Now, Hazeltine has no interest at all in restraining trade anywhere. Its sole interest is maximum trade, because that means maximum royalties.

The Court: I mean, it's not necessary, as I understand it, that that be your objective. If you are aware of the fact that what you are doing for a different motive does restrain trade, why, that of itself is sufficient; isn't that true?

Mr. Dodds: Well, I'm not sure; it depends. Be-
574 cause in this case, what we are doing in and of itself doesn't restrain trade. In other words, if we were—if Hazeltine were to administer these patents in Canada by itself, no conspiracy or anything, it would have to impose the same restrictions or risk the revocation of its patents. It isn't because the Hazeltine patents are in the Canadian Radio Patents Limited that this is true.

The Court: Does the government up there require that you keep out—

Mr. Dodds: It definitely does. Sections 53 to 76 of the Canadian Patent Act—unfortunately, I don't have it

in the courtroom; I have it in the hotel—states that if the patent owner or his licensee is not able to supply the market by Canadian manufacturers, then any member of the public can do one of two things. It can come in and ask the court for a compulsory license under its terms—not the owner of the patent's terms, but under its terms; and in flagrant cases, for a revocation of a patent; that is,
575 an absolute nullification of a patent.

And the Attorney General of Canada fairly recently brought just such a nullification proceeding in some patents involving particular eye glasses. So that whether these patents were administered by Hazeltine itself or by CRPL, or by any party, those same restrictions have to be imposed under Canadian law or else the owner of the patents is subject to forfeiture of his rights.

576 The Court: I mean, let me see if I've got this clear.

It is your position that if you kept control of your patents in Canada and licensed manufacturers up there to use your patents, and that all you did was to license them to use your patents, then, of course, your license would only be good in Canada so you don't have to put that in. You can't grant them a Canadian license to manufacture something in Greenland or America.

But if one of your licensees then imported a Zenith radio or television and sold it, is that, first of all, a violation of your license? Secondly, is that a violation of the Canadian law?

Mr. Dodds: I believe the Court interpretations have been substantial. In other words, they don't take account of any de minimus. But unless the patent owner or his licensees substantially meet the needs of the Canadian market, then the patents are subject to compulsory license and/or revocation by the court.

577 The Court: Well, does that mean that the Canadian public buy only material that is made in Canada?

Mr. Dodds: Yes. I don't know whether your Honor recalls, but at the time this antitrust action was brought against General Electric, Westinghouse, and Philips, there was quite a furor in the press.

The Court: I don't recall it. I had no interest in it.

Mr. Dodds: It was all in the press, because the Secretary of Foreign Affairs of Canada went down to Washington and made representations to the people here, complaining that the United States Government was trying to tell Canada how to run its business. And there was quite a furor in the press, on both sides of the border.

That is the policy. Now, we may not like that. We may say Canada is wrong, but that is their law and I don't believe we are in the position to tell Canadians how they
are to run their business. And if we are going to do
578 business in Canada, we have to comply with Canadian
law.

The Court: Of course, I'm unaware of what you are saying being the fact. And, of course, I'm unaware of it because of the fact that you haven't yet had a chance to put on your case.

Mr. Dodds: Right.

Mr. McConnell: That's defense.

The Court: And I can't assume at this point that that is the law with no evidence before me in regard to that.

I would say that if that turned out to be the law, and you so demonstrate in your case, you ought to look forward very hopefully to a motion to strike this testimony. But I, at this time, am going to overrule your objection to it and let it come in subject to a motion to strike at an appropriate time, when you have convinced me that what went on here is not a violation.

Mr. Dodds: Just one final point. In the agreement
which, again, has not been shown to your Honor—but
579 in the agreement between Hazeltine and the Canadian

Radio Patents, Limited, there is no restriction provision whatever. All it is, as I have said, is that Hazeltine has merely sold interest in its personal property. No restriction whatever is placed upon the use of that property.

580 The Court: However, if the one to whom you sold it uses it in such a way that it violates the antitrust laws—

Mr. Dodds: Your Honor, the Canadian company can't violate the antitrust laws.

The Court: No. I mean, the Canadian can't. But if as a result of your knowledge that it violates the antitrust laws, by virtue of the fact that it prevents importation in Canada of American merchandise, if that is a violation of the antitrust laws, why, then if there is sufficient evidence, there could be a conspiracy such as is charged in the counter-claim.

Mr. Dodds: Well, that's a little difficult for me to follow; that a Canadian company, absent any concerted any action—and I think we will assume that there isn't any concert between Hazeltine and the Canadian company in the sense there is no restrictions or agreement on their freedom of action—as to how the Canadian company, acting unilaterally, would—

581 The Court: I agree that an individual, under the law—and this is most unusual; something that doesn't exist as far as any state law is concerned—

Mr. Dodds: It is not only an individual, it is a foreign individual, in a foreign country, operating in a foreign country.

The Court: I understand that, I am aware that if one commits the substantive offense when it is not an offense, but if you conspire to do this with someone else, why then it becomes an offense. It is a quirk that I haven't become familiar with until I got down here, and I had great diffi-

culty in believing that that was the law. But the difficulty in my mind is now believing that, despite the fact that it is something that doesn't exist in any other sphere of illegal activity.

The objection—

Mr. Diggins: Your Honor—

The Court: Did you want to say something, Mr. Diggins?

582 Mr. Diggins: May I make one statement here.

The alleged conspiracy which is supposed to keep the Zenith products out of Canada—

The Court: Well, American products.

Mr. Diggins: Well, American products, but Zenith is the one that is complaining.

The Court: That's right.

Mr. Diggins: (Continuing.) is in essence a conspiracy —and I will use the word—among a group of Canadian companies.

Now, as far as Hazeltine, the plaintiff here, is concerned, Hazeltine has granted a license or granted rights under its U. S. patents to the Canadian CRPL, to use those patents lawfully under Canadian law. There is no agreement, no commitment, no contracts, combinations or conspiracy to which Hazeltine is a party in any way restraining U. S. trade. The only thing that restrains U. S. trade, your Honor, is the right of the Canadian Pool to bring in-
583 fringement suits against infringers.

And, your Honor, I submit that the whole pattern of this case is—and it is the pattern that has been argued to your Honor time and again—is that Zenith is trying to get a free ride and not pay for taking somebody else's brain products. And in Canada, I don't think there has been any showing whatsoever by independent evidence that there is a conspiracy to which Hazeltine is a party. There has been no showing of that; and that this evidence, for that reason, is not admissible.

And, your Honor, it has got to also be brought to mind that all of this evidence is not on the misuse theory of the patents. This is under the counterclaim where they must show—

The Court: I'm aware of the difference.

Mr. Diggins: I just think, your Honor, that there has been no showing, no sufficient showing by independent evidence of a conspiracy to which Hazeltine is a party.

584 The Court: I don't know what you mean by independent evidence. As I said time after time, this is not going to be used to prove the conspiracy if there is no other evidence of a conspiracy.

Mr. Diggins: Your Honor, the case that Zenith relies on is quite interesting in that regard. This case says:

> "We think that the industry-wide license agreements, entered into with knowledge on the part of the licensor and the licensees of the adherence of others, with the control over prices and methods of distribution through the agreements and the bulletins were sufficient to establish a prima facie case of conspiracy."

585 We haven't got it. All you have got here, your Honor, is concerning Canada alone, is a group of Canadians acting in accordance with Canadian law who have reached a certain conclusion. And the only way in which we can sell our patents and get some sort of a return—our Canadian patents, not U. S.—our Canadian patents and get a return on those is to sell them to the Pool.

The Court: I mean, why couldn't you have just retained them and issued licenses there as you do here?

Mr. Diggins: Several reasons, your Honor. In the first place, the Pool is the big licensing agency up there. Secondly, it would be quite an expensive operation to set up a policing agent, a licensing agency in Canada If we did it in Canada, why not require us to do it in Great Britain.

in Australia. And when you set up these policing agencies, it is just not worth while taking out the patents.
586 Foreign patents are expensive anyhow. And if you have to police them and enforce them, your Honor, it is the old pipeline theory that sitting in New York or Chicago, and trying to enforce your patents against defendants in Canada, in Great Britain, in Australia, is a hopeless task.

The Court: I assume, Mr. Diggins, that prior to putting Hazeltine's patents in the Canadian Pool, Hazeltine was aware of the fact that the Pool was not going to permit the importation of American merchandise and, knowing that, put their patents in the Pool. Does that, in your opinion, make any difference?

Mr. Diggins: Your Honor, I don't think it makes a particle of difference.

The Court: I just wanted to find out.

Mr. Diggins: The reason, your Honor, is, it's a question there of the propriety under the Canadian law. Mr. Dodds mentioned the other day that it is the same thing
587 as leasing a building for a share of the proceeds; and if you lease it in Chicago knowing that the business is going to be used for gambling, you are a party to an illegal activity and a party to an illegal conspiracy. If the same two parties enter into a lease where the building is located in Las Vegas, then, your Honor, it is not illegal. It is not an illegal conspiracy. Now, the point is, what we are saying—

The Court: I agree. And that is why I say, assuming that you knew prior to the time that they turned them over, that they were to be used in such a way, that it would be a restraint of trade in regard to American products going to Canada for Hazeltine patents—they knew this ahead of time.

Mr. Diggins: I would assume if they knew it ahead of time, it would still be perfectly proper.

The Court: I mean, you have answered my question.

588 The objection will be overruled, and this will be admitted subject to a motion to strike.

By Mr. McConnell:

Q. Mr. Crotty, will you now tell us what was said in that conversation, if you can tell us who said what, or tell us literally what was said, or give us the substance of it.

A. The best I can do is give the substance of the conversation as I recollect it. McConnell identified himself as the representative of CRPL and informed me of the companies whose patents were being administered by that group. He mentioned specifically that they had the licensing rights under the patents of Canadian General Electric, Canadian Westinghouse, Canadian Marconi, the Philips Company of Canada, and Hazeltine.

I believe, also, he mentioned the Parker patent on intercarrier sound, but I could be in error on that.

He told me that Zenith was putting an instrument on the market in Canada. He said that it infringed patents
589 that CRPL licensed. I think he identified at least three, one of which was a patent of Hazeltine origin. He told me that I would have to take a license; that the license could not be for importation, it would have to be for local manufacture.

He did say that he had been instructed by General Electric that he could and should grant licenses for importation under the patents of General Electric. He made the same statement with respect to the patents of Westinghouse. He said that—

590 The Court: Now, let me understand this. He said that he was told by both General Electric and Westing-

house that they could and should grant licenses for importation?

The Witness: I believe, your Honor, he expressed it that he had been instructed by those companies, in granting licenses under their patents.

The Court: That they could and should?

The Witness: Yes, your Honor. He said that he could not grant a license for importation under the patents of Marconi, Philips, or Hazeltine.

By Mr. McConnell:

Q. Well, did he tell you—well, have you exhausted your recollection now of what was said there?

A. That's about the substance of it. It was left on this note. He did not have a copy of the standard form license that they issued with him at the time, and he agreed to send it to me.

Q. Did he send it to you?

591 A. Yes, he did.

Q. Was there any discussion at that time about what you would have to do in order to obtain a Hazeltine license aside from paying royalty fees?

A. Well, he said to obtain the Hazeltine license I would have to manufacture—I would have to manufacture in Canada.

Q. Was that true—did he say that was true of the other patents of the companies that he mentioned, aside from General Electric and Westinghouse?

A. Yes, he did.

The Court: May I inquire further, Mr. Crotty. You indicated that he said you used three patents in your set, one of which was Hazeltine's. Did he tell you who the other two patents belonged to that you were using?

The Witness: Yes, your Honor, he did. My recollection is one was a patent owned by Canadian Marconi, and I be-

lieve the third was a patent owned by the Philips Company in Canada.

592 The Court: And neither of those were the ones he told you he had been instructed that he could or should permit importation of?

The Witness: That is correct.

The Court: All right.

By Mr. McConnell:

Q. Well, didn't he tell you that he couldn't issue a license?

A. Yes, he did.

Q. Except where you manufactured in Canada?

A. Yes.

Mr. McConnell: Have we got that document?

Mr. Curtis: It is up there.

Mr. McConnell: Which one is it, Mr. Curtis?

By Mr. McConnell:

Q. I show you a document which is marked for identification Defendant's Exhibit 154, which purports to be a letter from Mr. B. McConnell, President, on the letterhead of Canadian Radio Patents, Limited, 200 St. Clair Avenue, West Toronto, under date of June 5, 1959, addressed to you; and, also, Defendant's Exhibit No. 24-C, which

593 purports to be a license agreement, or a form of license agreement for Canadian Radio Patents, Limited, and a supplementary agreement marked Defendant's Exhibit No. 124-D which also purports to be a license agreement, standard license agreement of Canadian Radio Patents, Limited.

I ask you if you received through the mails the original of which Defendant's Exhibit 154 purports to be a Xerox copy, together with the enclosure, a form of licenses?

A. I'm sure I received the letter from CRPL under date of June 5, which is Defendant's Exhibit 154.

594 Q. All right. Will you tell us whether or not there were enclosures and, if so, if you can identify the enclosures?

A. I believe there were. Document 124-C is a form of license issued by CRPL which I believe is the one that was transmitted with that letter. I think the supplementary agreement, Exhibit 124-D was also with that letter. That's my recollection.

Q. All right. In the standard license agreement—will you look at it. Do you find that any restriction on the importing of radio or television sets?

A. The granting clause, which is in Article II, Section 1, as I understand it, is specifically confined to local manufacture in Canada, and the license, therefore, is only for local manufacture. Therefore, if you imported under this license, it would not be a licensed operation.

Q. Will you read that into the record please.

A. Section 1 of Article II reads as follows:

"The licensor hereby grants to the license upon the
595 terms and conditions hereinafter set forth a personal indivisible nontransferrable and nonexclusive license only for the licensed apparatus hereinafter specified and defined, and only as follows:

"(a) To manufacture licensed apparatus in Canada and to sell or lease licensed apparatus so manufactured;

(b) To have licensed apparatus manufactured in Canada for the licensee and to sell or lease such licensed apparatus so manufactured for the licensee subject to the payment of royalties thereon by the licensee as provided in Article III hereof. Such licensed apparatus shall be deemed to be licensed under this agreement at the time of sale or lease by the licensee."

Mr. McConnell: I offer those documents in evidence at this time, your Honor, under those exhibit numbers.

The Court: They may be received subject to a mo-
596 tion to strike. That is going to apply to all of this testimony and all these documents.

Mr. Dodds: I needn't necessarily repeat this each time, I assume?

The Court: I will make an announcement now, for the record, that that is the fact, and without further objections.

Mr. Dodd: Yes.

The Court: Because if he shouldn't testify in the first place, anything that he identifies and gets in the record shouldn't be in the record.

All right.

Mr. McConnell: In this letter—I want to read this to the Court, if I may—under date of June 5, 1955, from Mr. McConnell to Mr. Crotty. He says:

"During the discussions with yourself and Mr. Curtis in your office on May 12th, you requested a copy of one of our present standard license agreements together with further information relative to Canadian
597 Patent No. 562,773. A blank copy of an agreement is enclosed herewith. With regard to the patent and its use in Zenith Television Receiver No. B2225, I have had this matter reinvestigated and there is no doubt in our minds that the invention covered by the patent is used in this receiver. The tests show this quite conclusively. To explain this by correspondence would, however, be a most difficult task, as I surmise, and I would suggest therefore that, if possible, you visit Toronto at which time a test demonstration can be arranged for you."

By Mr. McConnell:

Q. Now, what was Patent No.—Canadian Patent No. 563,773? Do you know?

A. I can't identify the patent, except that the letter makes clear to me that this was one of the patents that McConnell said our instrument infringed.

Q. But you don't know which company? You can't tell us at the moment which company that patent belongs to?

598 A. My recollection is that is a patent of Philips.

Q. Now, did you have any other or further conversation with Mr. McConnell?

A. None comes to mind.

The Court: Maybe this is a good time to take our morning recess. It is halfway.

Mr. McConnell: All right. Thank you, your Honor.

(Thereupon a short recess was taken, after which the following further proceeding were had herein:)

599 Q. Mr. Crotty, at the time that you had your talk with any Canadian companies to import your sets into Canada?

A. I had received licenses which involved rights under Canadian patents and which would permit importation. They didn't always come from Canadian companies. For example, I had a license under the patents of Radio Corporation of America, which extended to their Canadian patent and had no restrictions whatsoever against importation.

I had a license under the patents of Canadian General Electric which had no restrictions against importation.

I had a license from Western Electric which included rights under their Canadian patents and again had no restrictions against importation. And I had the same kind of a license under the Parker Intercarrier Sound patents.

Q. Now, isn't it a fact that the licenses which you had received from RCA and General Electric and the telephone company came pursuant to the settlement which

we had in the litigation here in this United States
600 District Court?

A. That is right.

Q. Did anything further happen after Mr. McConnell came and talked to you?

A. No. It was just a few months after that that this lawsuit was started.

Q. I show you a document which is marked for identification Defendant's Exhibit No. 124-A, which purports to come from the Zenith files and also Defendant's Exhibit No. 150, and ask you whether or not you can identify these documents as having been received by Zenith from Canadian Radio Patents, Limited, on or about the dates they bear. I mean the original of them. Those are Xerox copies.

A. The document identified as Defendant's Exhibit 150 was received by the company. I observe my initials on it with the date, essentially contemporaneous with the date of the letter.

The other document which is Defendant's Exhibit 124-A is addressed to Mr. Birchaid, who at that time was my assistant, and I am sure that I saw this when it came in.

601 Q. What do those documents purport to be?

A. The last one that I referred to is a letter from —the signature is very obscure on this copy, but I am sure it is Stuart Brownlee, who at the time was an officer of Canadian Radio Patents, Limited. He signed the letter as secretary-treasurer, and it transmitted to Zenith a copy of the then standard license form issued by CRPL.

The Court: And the date of this is what?

The Witness: 1952, your Honor.

The Court: All right.

By Mr. McConnell:

Q. And what does the other document purport to be?

A. I will have to read this.

The documnt, Defendant's Exhibit 150, is comprised of two letters, the first under date of July 21, 1963, in which Mr. Miguel, who was in charge of our international operation, writes to CRPL and reviews past experiences of Zenith in connection with their pool operation, pointing out that we had been instructed that we could not
602 get a license except for local manufacture, and when we had imported sets, we were threatened with legal proceedings if the importation was not stopped, and he asked whether or not it was now possible to secure a license that would permit importation.

The second letter is under date of July—I believe it is 22. It is very difficult to read this.

Q. Well, that is the reply to it, is it?

A. It is the reply.

Q. All right, you don't need to go into the contents of it.

Mr. McConnell: I offer the documents in evidence.

Mr. Dodds: May I see it? I was supplied with only the first page of this exhibit. I haven't seen the second.

The Witness: It is a very difficult copy to read.

Mr. McConnell: That is always a problem when we are working with copies. I don't know any answer to it when we have got so many people that have to see it.

603 The Witness: It might help you if I were to read that into the record. I think that I probably can.

Mr. Dodds: I think that it would. I do not have a copy of that.

By the Witness:

A. The date is July 23, 1953.

"Dear Mr. Miguel:

"We have your letter of July 21st with reference to the requirements of the Canadian Patent Act and the licensing policy of Canadian Radio Patents Limited.

"There has been no change in the 'working in Canada' requirements of the Canadian Patent Act or in the specific ruling with respect to Canadian Radio Patents, Limited, given by the Canadian Commissioner of Patents to the effect that CRPL cannot grant licenses for importation.

"All of the companies selling radio or television receivers in Canada are licensed under the patents owned or administered by Canadian Radio Patents, Limited,
604 and all of these companies are manufacturing their receivers in Canada in accordance with the requirements of the Canadian Patent Act.

"We will be pleased to grant Zenith a license under the same terms and conditions as the other royalty-paying licensees, but one of the provisions is to manufacture in accordance with the requirements of the Canadian Patent Act.

"If you require any further details, please do not hesitate to call upon us.

"Yours very truly,

"S. D. Brownlee."

Mr. McConnell: I offer those documents in evidence, your Honor, under their respective exhibit numbers.

The Court: Well, of course, I don't know the contents, and, therefore, I don't know the relevancy and I am having difficulty in—

605 Mr. McConnell: The relevancy is that it shows that as far back as 1952 this Pool was refusing to license Zenith under these patents of this Pool to import.

The Court: If that is what they tend to show, and I assume they do, based upon your statement, they may be received, subject to the same—

Mr. McConnell: Thank you, your Honor.

(Said documents, so offered and received in evidence, was marked as DEFENDANT'S EXHIBIT NO. 150.)

By Mr. McConnell:

Q. Now, going to a different subject, Mr. Crotty, did you have a meeting with Mr. Ruestow of the Hazeltine Corporation on or about October 18, 1961, on the subject of patent licensing?

A. I have difficulty assigning the specific date, but I did have discussions with Mr. Ruestow on the subject of patent licenses, yes.

Q. Well, let me show you a document which is in evidence here as Defendant's Exhibit 10, which is a letter
606 under date of—copy of a letter under date of October 25, 1961, addressed to you from Mr.—by you to Mr. Ruestow, and I ask you to look at that letter and see if it refreshes your recollection as to when you had your meeting with Mr. Ruestow.

A. Yes, this letter I recognize I had written to Mr. Ruestow.

The meeting of which I speak was one that took place in the offices of Hazeltine on the occasion of my visit to their offices in order to study documents in connection with this litigation.

Q. All right.

Now, will you tell us what was discussed there? Give us the substance of your conversation with Mr. Ruestow and tell us who was there. You told us where it was and the approximate time.

A. Just Ruestow and myself were present.

The discussion concerned the color television receiver that Zenith was manufacturing and Ruestow's statement that we would require a license under the Hazeltine patents.

607 Q. Now, were the patents that you discussed there those that are set forth, the nine patents that are set forth in this letter of October 25th, 1961?

A. If my memory serves me correct, those were the

patents that Ruestow told me at that meeting we would require licenses under.

Q. Now, you say here:

"At the same time you supplied me with a copy of what I understand to be your standard form of license agreement bearing the numeral 918 on its frontispiece,"

And I show you a document which is marked here as Defendant's Exhibit No. 2, which bears 918 on its frontispiece. It purports to be a standard form of license agreement between Hazeltine Research, Inc. and an unnamed licensee, and I ask you whether or not the original of that document was left with you by Mr. Ruestow?

A. I can't say this is the one, Mr. McConnell, because you observe this has the legend "Exhibit B" at the upper right hand corner, that this is a copy of the
608 same form of license that came from Hazeltine's file, but you will observe it has the number 918, so I assume it is the same form of license that I was given by Ruestow.

Q. Well, as you state in your letter here—well, let me put it in a different form.

Did Mr. Ruestow supply you with a copy of a license agreement bearing the numeral 918?

A. I believe he did.

609 Q. And can you identify that that he furnished you as the same as the one I just showed you?

A. Yes, this is the same instrument, same kind of instrument.

Q. Was that the form of license which he tendered to you to cover licensing of these nine patents which you were talking about here?

A. That was my understanding of the purpose of giving me the form, yes.

Q. Did he ask you to sign it? Did he want you to execute it?

A. Well, not at the moment, because he knew I wasn't.
Q. Well, did he give you any other document to sign?
A. No.
Q. To study?
A. No.
Q. All right.
Now, did you have a further meeting with Mr. Ruestow?
610 A. I expect I did, but I don't recall any.
Q. Let me ask you this—I will withdraw that question.
I show you a document which is Defendant's Exhibit No. 11, which purports to be a copy of a letter from you to Mr. Ruestow of the Hazeltine Corporation, under date of November 21st, 1961, and I ask you whether or not you wrote and sent that letter through the mails?
A. Yes, I did.
Q. Now, in this letter you ask him if he would make known to you "the basis upon which licenses may be obtained under such of those patents called to my attention."
You further say:
"I, of course, am fully aware of the Hazeltine standard license agreemnt and understand that a license is available through that instrument under not only thes selective patents but also of the patents subject to licensing by Hazeltine. Since we obviously have no need for a license under all of the patents
611 of your portfolio, I am most desirous of learning the terms upon which the individual licenses may be obtained under any of those identified patents."
Did you receive any reply to that request?
A. I did not receive a letter in response to that.

Q. What reply did you receive, if any, letter or otherwise?

A. Subsequent to writing that letter, and perhaps another one in which I urged Ruestow for the license terms, I did receive a document that purported to be—at least I understood it to be a license offer.

Q. How was it received? Do you recall?

A. I believe it was handed to me in a visit to Hazeltine's offices. I am not certain.

Q. I show you a document which is marked for identification as Defendant's Exhibit No. 12, which purports to be a tentative draft for purposes of negotiation of a license agreement and ask you if you can identify this document as the one to which you referred as having been given
612 to you by Mr. Ruestow?

A. Yes. I have noted here in my own handwriting that it was received from Ruestow at Litteneck on April 11, 1962.

Q. Are the notes on that document yours?

Q. Now, did you have any discussion with him at that time about that document?

A. We had no discussion at the time the document was given to me. I was to take it with me and study it.

Q. And you took it and you did study it?

A. Yes, I did.

Q. Was there a maximum amount set forth in that document?

A. I believe there is. I think on the last page of this instrument I have computed what I understood to be the maximum provided by the instrument and it turned out to be approximately $500,000 a year.

613 Q. Now, did you also compute from that document the prices fixed on these nine patents which were called to your attention and which it was claimed your company was infringing.

A. I didn't have to compute that. It sets forth in the Schedule A, which is the last page of the instrument, in that schedule each patent is identified by number. A royalty percent for license under each patent is given and, also, an annual maximum that the licensee would have to pay for a license under each such patent is set forth.

Q. Did you total up what those maximums would amount to on those nine patents?

A. I did, and if my arithmetic is correct, it was $435,000.

Q. Now, did you have some discussion with Mr. Ruestow about a maximum figure on their licenses which was different from $500,000?

A. Well, in giving Ruestow my severe criticism of this instrument—

Q. All right, let's get at it this way: Did you have a talk with Mr. Ruestow after you had made an analysis of that document?

614 A. Yes, I did.

Q. All right. Now you tell us what was said. Where was it?

A. I believe it was the telephone conversation, and you will observe my handwritten note on the first page of the instrument states that the yearly maximum of this instrument is $500,000, but the RCA's maximum is between $150,000 and $200,000, and I told him that it was just totally objectionable that we should be asked to pay anything like $500,000 when this other industry member had everything that this license offered, at that time, at a yearly maximum of $150,000.

Q. What did he say to that, if anything?

A. Well, if I remember correctly, I think he said that he had no intention of asking me to pay $500,000, but I advised him that this instrument didn't reflect it, and this, then, would lead me to believe that the instrument was an effort to push me into the standard package license which carried this $150,000 maximum at that time.

Q. Did you tell him why you thought it was an effort to lead you into that package license?

A. I am not sure that I did.

615 The Court: When did you have a discussion with him about the standard package license, or did you?

The Witness: I don't believe we did, your Honor.

The Court: All right, I just wondered how—this is the first time you have mentioned it and I wondered if I had slept through some of that testimony.

The Witness: No, I mentioned that at the first contact he gave me a copy of the standard form. That was the 918. That was the package license and I then—

The Court: I haven't seen any of those and I don't know whether 918 has a maximum in it because I haven't had a chance to look at it.

Mr. McConnell: Let me ask it.

By Mr. McConnell:

Q. Does 918 have a maximum in it?

A. 918 has a maximum for monochrome radio receivers but not for color receivers.

Mr. Dodds: Would your Honor like to see a copy of this?

616 The Court: I would like to see the one that is in evidence.

Mr. Dodds: This is a copy of the one that is in evidence.

The Court: I would like to see it at the proper time and for me to look at it he will hand it up to me.

Mr. McConnell: I am going to offer them.

By the Witness:

A. The instrument itself has no maximum on color. That maximum was granted to some industry members who had taken the license by way of a side letter.

617 By Mr. McConnell:

Q. Well, now, did you ever have any talks at any time with Mr. Ruestow, where he told you in effect, or in substance, that your maximum wouldn't be any larger than RCA's?

A. Yes.

Q. When did you have that talk?

A. Well, that was—I believe a telephone conversation when I told Ruestow that I would not acept this.

Q. He then told you that in any event, your maximum would not be any more than RCA's?

A. He told me I wouldn't be expected to pay any more than $150,000, which surprised me because there was no evidence of that in this document.

The Court: Let me ask you this. You said you complained to Ruestow about RCA's $150,000. Did that cover radio, and black and white, and color television?

The Witness: It did, your Honor.

The Court: I mean, that is the first time I found that out.

618 By Mr. McConnell:

Q. It covered every product, did it?

The Court: If I keep digging, I will understand this. Go ahead.

By the Witness:

A. It covered the radio products, by which we mean the radio receiver, the monochrome receiver, the color receiver, and it conveyed licenses unto all of the patents subject to the licensing rights of Hazeltine within the license interval. I think that's essentially what it was.

By Mr. McConnell:

Q. Now, that $150,000 maximum that you talked about, that you talked to Mr. Ruestow about, that however was only for the package license, was it not?

A. That was my understanding.

Q. Well, did he tell you that in words, or in effect, or in substance?

A. No. I just think we both understood it. We were talking about the RCA license that we both knew, I'm sure, to be the standard license.

619 Q. To be a package license?

A. Yes.

Q. Well, now, why was it that you believed that you were being forced into the package license when the nine patents which you have designated add up to $435,000 for license fees?

A. Well, just the matter of economics. We couldn't take the competitive disadvantage of the license under nine patents at $435,000.

Q. If you could get it for $150,000 for all of it; is that it?

A. That's it, yes.

The Court: Isn't that the difference between buying on the first floor and buying in the basement?

The Witness: Yes, sir.

By Mr. McConnell:

Q. All right. Now, after you had made that analysis, did you write the letter, Defendant's Exhibit No. 14, under date of May 17, 1962 to Mr. Ruestow?

A. Yes, I did.

620 Q. Does that state your position with reference to his proposed individual patent licenses?

A. Yes.

Mr. McConnell: I want to read this paragraph to the Court, if I may, from Defendant's Exhibit 14.

It says:

"You have supplied a list of nine patents which you say are used in our color receiver, and you have

suggested that licenses could be obtained under any or all of them, but the terms of this sort of license have certainly not been known to me. I am mindful of a document prepared by you in the form of a license draft, but it bears on its face a statement that it is not to be construed as an offer to license."

By Mr. McConnell:

Q. Were you referring to that document that I identified there, that you made your penciled memorandum on—

621 A. Yes, I was; our Exhibit 12.

The Court: That is the one where you took your pencil and added up the $435,000?

The Witness: Yes, your Honor.

The Court: All right.

By Mr. McConnell:

Q. (Reading.)

"Moreover, that instrument, whatever its intent and purpose may be includes the royalty rates that are so extreme in comparison with the Hazeltine standard license and other established royalty rates of the industry to be totally unacceptable. I advised you of that conclusion sometime ago."

Then you say:

"In a phone conversation subsequent to your last letter, you stated that it was your intention further to study the terms under which licenses may be acquired."

Did he tell you that?

A. Yes, he did.

622 Q. Well, now, did he make some further study and suggest anything further in the way of individual licenses to you?

A. Well, I don't know what he did, but I did get another instrument, another schedule of royalty rates, yes.

Q. I show you a document which is Defendant's Exhibit 16, which is on the letterhead or Hazeltine Research, Inc., under date of May 20, 1963, apparently from Mr. Ruestow to you, and I ask you if you received that through the mails?

A. Yes, I did.

Q. Is that a further proposal by Mr. Ruestow on licensing?

The Court: This I assume is all offered under the misuse theory?

Mr. McConnell: Correct, it didn't have anything to do with the overall conspiracy.

The Court: I understand.

By the Witness:

623 A. Well, Mr. McConnell, there was an earlier schedule from Ruestow. The one that you hand me here supplements the earlier one by adding a new paragraph six. The earlier one was identified as having been furnished to me with his letter of March 20, 1963.

By Mr. McConnell:

Q. All right. I will show you a document which is Defendant's Exhibit 15, which is a letter under date of March 20, 1963, signed by Mr. Ruestow of the Hazeltine Research, addressed to you and enclosing schedule of license terms of television receivers.

I ask you if you can identify that as having been received through the mails from Mr. Ruestow?

A. Yes, it was.

Q. Now, does that set forth a new schedule?

A. Yes, it does.

Q. Of licensees?

A. Yes, it does.

Q. All right. Now, did you make some analysis of that?

A. Yes, I did. On the first page of their schedule, the schedule that is attached to his letter of transmittal,
624 there is a list of the nine patents with the rates proposed here. And I have in my own handwriting put in the rates that had been assigned to these patents in the first document submitted to me and compared them in this way.

Q. All right. Now, what conclusions did you reach after making that comparison?

A. It looked to me like Mr. Ruestow made quite some change.

The Court: Up or down?

The Witness: Down, your Honor. The total royalty charge for the nine patents under the first document amounted to 3.2 per cent. And the charge—

The Court: 3.2 per cent of what?

The Witness: 3.2 per cent of our selling price of the instrument.

The Court: I mean, of your entire production or of the instrument in which it was involved?

The Witness: This is a unit royalty, your Honor. You pay the 3.2 per cent of the selling price of each instru-
625 ment. And the obligation to pay attached to all instruments, that you made, whether they used the patents or not.

The Court: That's what I'm trying to find out.

The Witness: That is correct. Now, with the new percentage rates, they now aggregate to a little less than 1.9 per cent in this document.

By Mr. McConnell:

Q. Well, did you figure out what the maximum would amount to on those nine?

A. Yes. This instrument provided a variety of elec-

tions that you could take. For example, I could have taken a license under the nine patents, on one application that is mentioned here, for a yearly maximum of $275,000; or I could take those same nine in the one application and add to that, it seems to me, patents—yes, I could add to that the patents and applications that Hazeltine had as of January 1, 1963. This gives me a larger package for a yearly maximum of $300,000.

626 The Court: That is patents that haven't yet been patented; is that it?

The Witness: Your Honor, it would include patents or patent applications of Hazeltine as of January 1, 1963.

The Court: Whatever they might be?

The Witness: Yes, your Honor.

627 The Court: All right. I mean, it was a vague sort of thing.

The Witness: That's right.

Now, the third choice you had, you could have, by bringing in—let me say after acquired patents or applications within the terms of this instrument, and then the maximum was $310,000 a year. I believe that's right That is my recollection of this document.

Mr. McConnell: All right.

The Court: May I take you back. In regard to that first document you mentioned two figures. One was in excess of $500,000; the other was $435,000. You indicated the $435,000 was what you contemplated the maximum would be. What was the $500,000 figure that you were talking about?

The Witness: The $435,000 was the maximum obligation for a license under nine identified patents. Now, if you added to that those nine patents, license rights under the rest of the patents and patent applications of

628 Hazeltine, it took a little—it would cost you a little bit more: I think you added .15 per cent of 15 per cent, and it comes up to about $500,000.

The Court: I mean, I wondered what that was because we dwelled on it very lightly.

All right. You may proceed with this.

By Mr. McConnell:

Q. All right. Now, the maximum there, then, under those nine patents is something over $300,000; is that correct?

The Court: With the fringe benefits.

By the Witness:

A. That's right. With the fringe benefits, yes. The nine themselves require a yearly maximum of $275,000.

By Mr. McConnell:

Q. And the package license, you say—

A. At this time was $150,000, I believe.

Q. Which would include these and everything else that Hazeltine had?

A. Yes.

Q. Now, did you—

629 The Court: I mean, the package license that you say was offered RCA was $150,000.

The Witness: Yes, your Honor.

By Mr. McConnell:

Q. But I understood you to say that that was, impliedly at least, offered to you by Mr. Ruestow?

A. Yes. Well, this instrument also provided a package, a different package from any that I have mentioned thus far. In Paragraph 4, Subparagraph (a), this instrument provided that if I took a license that covered both patents and patent applications of Hazeltine for both color and monochrome receivers, then my over-all maximum would be $200,000.

Q. So your over-all maximum for everything is $200,000,

and the nine patents is three hundred and something—$310,000?

A. The nine patents were $275,000.

Q. $275,000.

The Court: That is strictly TV patents?

The Witness: Yes, your Honor.

The Court: And as I understand it, you believed prior to that time that you could get all patents, radio and
630 TV patents, for $250,000?

The Witness: Yes, your Honor. But we didn't pay much attention to the radio, because I wasn't aware of any significant outstanding patents of Hazeltine in that—

The Court: I understand that, but theoretically there was more in the basket whether you needed them or not.

The Witness: I believe so.

The Court: They were there if the time ever should come that you did need them. They were available.

The Witness: Yes.

By Mr. McConnell:

Q. Now, pursuant to that last offer, did you receive as a supplement to it another proposal for licensing?

A. Well, the schedule that we have been talking about was to be next to a new standard license agreement that was under preparation. This schedule so states, and I ultimately did get the new standard license agreement.

Q. All right. I show you a document which is
631 marked for identification as Defendant's Exhibit 17, which purports to be a letter on the letterhead of Hazeltine Research, under date of May 29, 1963, addressed to you from Mr. Ruestow, and I ask you whether or not you received that and whether or not enclosed with it was that other document?

632 Mr. Dodds: Your Honor, as a matter of principle, I think I should object since this is dated after the

cutoff date. I would be perfectly willing to waive it if I didn't establish a precedent to waive everything after that date.

Mr. McConnell: I think that Counsel is all right on his date. But this first document, which was within our time, which we have been talking about prior—

The Court: You mean March 20th?

Mr. McConnell: Yes. It refers to something that is coming later, which was part of that original offer.

Mr. Dodds: I say, I am perfectly willing to waive it so far as this document is concerned, so long as I don't set a precedent with regard to all documents.

The Court: Let me say that I will see that it doesn't create a precedent.

Mr. McConnell: I am not trying to set a precedent.
633 I'm just trying to show the complete terms of that document.

The Court: No. But I think that if Mr. Dodds hadn't spoken up, you could, and properly so, and I think I would if I were in your place, say, "Well, he has already waived one after the 1st of May; now he can't object to any others."

He is waiving as to this document, but not as to any other. And it having been waived, it may be received in evidence.

By the Witness:

A. I received the letter, Defendant's Exhibit 17, and with it Defendant's Exhibit 18 which is standard license form A.

By Mr. McConnell:

Q. Does that have a maximum on it?

A. My recollection is that the schedule we mentioned earlier with the next two and incorporated in this instrument; and to that extent, yes, it was.

Q. Now, prior to the filing of the counterclaim in this

cause, did you ever have any further communications,
634 or documents, or correspondence with Mr. Ruestow?

A. Yes. After having received the schedules that we are speaking of here, I believe still another was received. I'm not sure whether that was received addressed to me personally or to Mr. Wright. Perhaps others; there was at least one more.

Q. No. I said prior to the filing of the counter-claim. The document referred to, I think, was dated November 14—

A. I misunderstood. I thought you said subsequent to that.

Q. So that we have covered everything now that went on between you and Hazeltine and Mr. Ruestow in negotiating licenses, or talking about a negotiation of a license up to the time of the filing of this counter-claim; is that correct?

A. I believe so.

Q. Now, going back to 1958, did you have a talk with Mr. Dodds?

A. 1958, I may have.

635 Q. Well, you had a license from the Hazeltine Company up to what time?

A. 1959.

Q. Now, prior to the expiration of that license, did Mr. Dodds communicate with you seeking a renewal or another license?

A. Yes—

The Court: May I ask what kind of a license you had?

The Witness: Yes, your Honor. We had the standard monochrome and color receivers. It was a five year license.

The Court: It was executed in '54?

The Witness: It was executed in '54; it expired on June 30, 1959, I think.

The Court: Did it have a maximum on it?

The Witness: It had a maximum for monochrome and

color. That maximum was $50,000. It did not have a maximum, as I remember it, for color.

The Court: You mean it had a maximum for monochrome and radio.

The Witness: That's right, but not for color.

636 By Mr. McConnell:

Q. Well, was there any maximum worked out by custom or agreement?

A. I'm sure the RCA license was of the same type, and theirs had a maximum for color which came in by way of—

The Court: All I'm trying to find out is what the terms of your license was that expired on June 30 of 1959. That's all I'm trying to find out.

The Witness: Yes. That had a maximum for radio and monochrome, but not for color.

The Court: And that maximum was $50,000?

The Witness: Yes, your Honor.

By Mr. McConnell:

Q. All right. Then you had talked, did you, with Mr. Dodds?

A. Yes. He came in to visit with me shortly before the expiration of the license, I think, and asked that the license be renewed.

Q. All right. Now, did you have any talk with Mr. Dodds about terms for individual license—or individual

637 patents?

A. Well, our discussion amounted to this. I told Mr. Dodds that I would not recommend that the license be accepted unless I was satisfied of the need for the license. And he then said that we were using four of their patents. This was in answer to my request that he show a need for the license.

The Court: Four of—

The Witness: Four of Hazeltine's patents.

The Court: In what?

The Witness: Monochrome.

The Court: All right.

The Witness: At this time, your Honor, we were not making color receivers.

638 The Court: That eliminates it, then. I mean, so that up until the expiration of this, your maximum was $50,000 a year for everything, because you weren't using any color patents; is that right?

The Witness: That's correct. We were not making color receivers at that time.

The Court: So that at the time this expired, your maximum was $50,000 a year.

The Witness: Yes, your Honor.

By Mr. McConnell:

Q. On everything you were making.

A. That's right.

The Court: On everything you were making, all right.

By Mr. McConnell:

Q. All right. Now, he pointed out to you four patents; is that right?

A. Yes, he did.

Q. Now, did he make you a proposal as to license fees on those four patents?

A. Well, I was not in agreement that we required licenses under the four patents.

Mr. Dodds then told me of a scheme, a new licensing
639 formula that I had heard of previously, from Hazeltine under which you could get a standard—the standard license, but now restricted, if you please, to one patent of your choosing, for which the maximum would be half of the package maximum.

The Court: In your case, $25,000?

The Witness: $25,000.

Or you might also have a license under two patents of your choice for 80 per cent of the package price.

The Court: Which would be 40.

The Witness: Yes, your Honor. But the price, if you took three or more patents in the license, would be the package price of $50,000.

By Mr. McConnell:

Q. In other words, if you took three, you might as well take the whole package so far as the money is concerned?

A. Well, yes.

Q. Did you have any further talks with Mr. Dodds on the subject of licensing?

A. Well, the experience that I related was not just
640 one meeting. There were several meetings over which this transpired.

Q. Well, was there any other subject or any other proposal made to you?

A. No other proposal was made.

Q. The 50, 80 and 100 per cent?

A. That is all.

The Court: This applied only to radio and monochrome?

The Witness: Yes, your Honor. It did not apply to color. And it is my understanding that all of the other terms of this standard license would be in effect.

Mr. McConnell: You may cross-examine.

The Court: I mean, I don't know what that means, all the other—

The Witness: For example, your Honor, the obligation to pay whether you used any licensed invention or not, would still be with you.

The Court: As I understand it, you and Mr. Dodds never discussed the color patents.

The Witness: Not at this juncture, no, sir.

641 The Court: All right. I mean, that's what we are talking about.

Mr. McConnell: You may cross-examine Mr. Dodds.

The Court: You may proceed.

Cross-Examination by Mr. Dodds.

Q. Taking last things first, when you and I were discussing these four patents, as to some of which you disagreed, one was a patent, was it not, on a grounded grid amplifier to which you showed me a reference that I agreed would probably make the patent unenforceable?

A. I think that is correct.

Q. And another one of those patents, was it not, was a patent which had been involved in litigation with the Philco Company, and in which they had found a reference which we concluded made that patent unenforceable, is it not?

A. I don't remember that.

Q. Well, do you remember that as a result of these discussions that finally ended up, that we were only discussing the patent here in suit?

A. Well, we ultimately discussed only one, but I
642 think that was your choice.

Q. And it was true, was it not, that at that time Zenith Radio Corporation was offered a license under the patent in suit for a maximum fee of $25,000 as applied to the monochrome receivers?

A. That's correct.

Q. Now, you have testified about your conversation with Mr. Brian McConnell. Had he indicated that there was one Hazeltine patent which he felt covered Zenith TV receivers? Do you recall what patent that was?

A. I cannot identify the number, but I believe it had to do with a centering magnet structure for cathode ray tubes.

Q. It was not the counter part of the patent in suit?

A. No, it was not.

Q. To the best of your knowledge, Mr. Crotty, did you

ever request from Hazeltine a license under any one or two or three patents?

A. Yes, I did.

Q. When was that, and to whom was the request made?

643 A. I put this request to Ruestow. It wasn't for one or two or three patents. My request was for something other than the standard package, and it had to do with our discussions on color.

Q. Well, isn't it true that actually your request was a request for rates? You didn't actually request a license under those patents, did you?

A. I requested the terms.

Q. Yes. And up to the time of the filing of the counterclaim in this action, did you or the Zenith Radio Corporation ever make any request of Hazeltine for a license under any of its color television patents?

A. Did we request such a license?

Q. Yes.

A. No.

Q. Speaking about the question of package licenses, I think you indicated in your earlier conversations with Mr. Ruestow, he had left a copy of the Form 918 which was a package license for your corporation. At the time he did that, did he indicate that if Zenith Radio Corpora-

644 tion did not accept that license, it would be sued?

A. Well, I take that to be implicit in his representation that I needed a license under nine patents.

Q. I thought in the first conversation, at the time when he left the 918 form license with you—at that time, had you arrived at the nine patents which Mr. Ruestow thought you required?

A. He had. I hadn't.

Q. He had arrived at that?

A. Yes.

Q. However, he did not explicitly or expressly say that if you do not accept that form 918 license, that Zenith Radio Corporation would be sued?

A. No, he did not.

Mr. Dodds: That is all the questions I have.

645 The Court: Anything else, Mr. McConnell?

Mr. McConnell: I have no further questions of the witness, your Honor.

The Court: All right, step down.

(Witness excused.)

Mr. McConnell: Mr. Wright.

JOSEPH S. WRIGHT, called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please.

A. Joseph S. Wright. W-r-i-g-h-t.

Q. And where do you live, Mr. Wright?

A. I live in Kenilworth, Illinois.

Q. Your address there?

A. 145 Oxford Road.

Q. And what is your business or occupation?

A. I am president of Zenith Radio Corporation.

Q. And where are their general offices located?

A. At 6001 West Dickens Avenue, Chicago, Illi-

646 nois.

Q. How long have you been connected with Zenith Radio Corporation in any capacity?

A. Since 1952, I believe the date was, May 1.

Q. And how long have you been president of that company?

A. Since April of 1958—'59 I am sorry, excuse me. I believe that is the date.

Q. Are you also a director of that company?

A. Yes, I am.

Q. And prior to the time that you were president, what was your position with the company?

A. Executive vice president.

Q. And were you also at one time general counsel for the company?

A. I was.

Q. During what period of time?

A. I was general counsel of the company, as I recall dates, from approximately 1953 or '54 until 1958.

Q. I show you a document which is marked Defendant's Exhbiit No. 138, which consists of a letter purportedly 647 written by you to Canadian Radio Patents Limited, under date of September 10th, 1958, attached to it is a notice, and attached to it is a letter from Mr. McConnell to you under date of September 16, 1958, and also a letter from you to Mr. McConnell under date of September 23rd, 1958, written on the letterhead of Zenith Radio Corporation of Canada Limited, and I ask you whether or not you can identify these documents as having been sent by you and received by you through the mail, telling us which documents you sent and which documents you received.

A. Yes, I recall these documents. The first is a carbon copy of a telegram that I sent to Canadian Radio Patents Limited under date of September 10, 1958.

The second document is a notice to importers, vendors, or users of radio and television receivers, and other electronic equipment by Canadian Radio Patents Limited, which had appeared in the magazine Trade Builder in Canada for August 1958 and which was the subject of my telegram to CRPL.

The third document is a letter that I received from
648 B. McConnell, president of Canadian Radio Patents Limited, which is dated September 16, 1958, apparently in reply to my telegram.

The fourth is a carbon copy of a letter that I sent to Mr. McConnell on September 23, 1958, in reply to his letter of September 16.

649 The Court: Acting in what capacity?

The Witness: I was, at that time, executive vice-president, your Honor.

The Court: Of what?

The Witness: Zenith Radio Corporation.

The Court: Well, the reason I asked is that there has suddenly been thrown into this lawsuit something about Zenith of Canada, Limited, and I wondered if this had anything to do with Zenith of Canada, Limited. If it doesn't, why, fine. I am just trying to straighten out the two Zeniths.

By Mr. McConnell:

Q. Will you tell us what Zenith of Canada Limited is?

A. Zenith Radio Corporation of Canada, Limited, I believe that is the correct name, is a corporation organized under the laws of Canada with its principal offices, I believe, in Toronto. It has been in existence for quite a few years and is a wholly owned subsidiary of Zenith Radio Corporation which, I believe, originally engaged in the sale of hearing aids in Canada, extensively, and now is also en-
650 gaged, to some extent, in the sale of radio and television receivers as well.

The Court: Maybe at this time, having that explanation, it would be a good time to recess.

For the benefit of you gentlemen, so that you can plan your time, I regret that I have to attend a judge's meeting at four o'clock this afternoon. I would much rather attend the hearing on this lawsuit than go to a judge's meeting.

I also regret that contrary to what appears to be the practice down in Washington, they have turned the clock back and, Federally, we celebrate Washington's birthday on the 21st of February instead of the 2nd, and as a result they compel us to close the court on Friday, the day before Washington's birthday. This is something new, too, so that we will go to four o'clock this afternoon, and pursuant to having no choice about it, we won't be able to proceed on Friday, so that you can plan your time accordingly.

(Court recessed until 2:00 o'clock P. M.)

651 • • (Caption—59-C-1847) • •

Before the Hon. Richard B. Austin,
Wednesday, February 19, 1964,
2:00 o'clock, p.m.

The trial was resumed pursuant to recess.

Present:

Mr. Dodds,
Mr. Ruestow,
Mr. Diggins,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

652 The Clerk: Case on trial.
The Court: You may proceed.

JOSEPH S. WRIGHT, called as a witness by the Defendant herein, having been previously duly sworn, was examined and testified further as follows:

Direct Examination.

Mr. McConnell: If the Court lease, I want to offer these documents in evidence at this time as Defendant's Exhibit 138, bulk exhibit.

The Court: These are the documents regarding which he testified prior to the recess?

Mr. McConnell: Yes, your Honor.

The Court: They may be received.

(The said documents, so offered and received in evidence, were marked DEFENDANT'S EXHIBIT 138.)

Mr. McConnell: I would like to read parts of these docu-

ments to your Honor, so that we know what we are talking about here.

The first document under date of September 10, 1958,
653 is a telegram addressed to Canadian Radio Patents Limited, 200 St. Clair Avenue, West Toronto 7, Canada, signed by Joseph S. Wright, executive vice president, Zenith Radio Corporation of Canada, Limited.

The context of the telegram is as follows:

"In the magazine Trade Builder for August, 1958 there appears an advertisement under the headline 'Notice to Importers, Vendors or Users of Radio and Television Receivers, and other electronic equipment' in the name of Canadian Radio Patents Limited. This advertisement contains false statements that importers, vendors, purchasers or users of radio and television receivers incorporating patented inventions owned or administered by Canadian Radio Patents Limited and not manufactured or sold by certain named licensees of Canadian Radio Patents Limited will be held liable for patent infringement. This false statement is calcu-
654 lated to and does injure and damage the business of Zenith Radio Corporation of Canada, Limited, whose products are fully licensed to the extent that they employ any patents administered by Canadian Radio Patents Limited. We insist that such statements immediately be terminated; that we have your assurance that they will not be repeated in the future and, also, that a public retraction be made. Lacking such assurance and retraction, we will be forced to take appropriate legal action to protect our interests."

Then there is a notice which was to importers, vendors or users of radio and television receivers and other electronic equipment, which reads as follows—

The Court: Is this the ad, Mr. McConnell?

655 Mr. McConnell: Yes, your Honor.

"Canadian Radio Patents Limited is a central patent licensing agency administering various important Canadian patents of inventions relating to radio and television receivers and other electronic equipment. Under the provisions of Section 46 of the Canadian Patent Act, the owner of a patent and his legal representative have the 'exclusive right, privilege and liberty of making, constructing, using and vending to others to be used' the patented invention and Canadian Radio Patents Limited, in accordance with the requirements of Section 67 and 68 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers and other electronic equipment embodying inventions which it administers."

And then follows a number of different companies, and the Zenith Radio Corporation is not included among them.

"The above companies are working the patented
656 inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms. Canadian Radio Patents Limited desires to inform importers, vendors, purchasers or users of sets of radio and television receivers and other electronic devices and equipment incorporating patented inventions owned or administered by Canadian Radio Patents, Limited and not manufactured or sold under license from Canadian Radio Patents, Limited that they will be held liable for patent infringement. Canadian Radio Patents, Limited will be glad to furnish upon application full particulars and information in respect to the patents that it owns or administers relating to radio and television receivers and other electronic devices and equipment.

"Canadian Radio Patents, Limited, 200 St. Clare Avenue, West, Toronto 7, Canada,"

657 In response to Mr. Wright's telegram this letter was received from Mr. B. McConnell, president, and on the letterhead of Canadian Radio Patents, Limited under date of September 16, 1958:

"Dear Mr. Wright:

"I acknowledge your telegram of September 10 and regret that you feel obliged to take exception to the advertisement of our company which appeared in the August issue of 'Trade Builder.' I gather that you may be dealing directly with some patentees concerning licensing arrangements in this country. However, you are no doubt aware of my discussion with Mr. Kiely of your company regarding the Canadian patent situation in the electronic field. He very kindly furnished me with circuit diagrams of your sets now appearing on the Canadian market, and from a preliminary inspection of these diagrams it appears that you are using inventions covered by patents which we administer and under which we are informed you are not licensed. For
658 example, there is Armstrong Patent No. 441,777 which is owned by Canadian Marconi.

"It would obviously be to our mutual advantage to avoid any misunderstanding with respect to these matters. With this in view, I shall be very pleased to meet you or other officers of your company at your convenience. If you expert to be in Toronto in the near future, please call me and I will make myself available.

"Although your telegram is signed on behalf of Zenith Radio Corporation of Canada, Limited, I observe that it originated in Chicago. I am therefore sending this letter to your Chicago Office and forwarding a copy to your Canadian address."

659 In response to that letter, Mr. Wright wrote to Mr. B. McConnell of the Canadian Radio Patents Limited under date of September 23, 1958, as follows:

"Dear Mr. McConnell:

"I have your letter of September 16, 1958, in reply to my telegram of September 10th. Your letter completely ignores the advertisement in the August issue of Trade Builder which was the subject of my telegram, unless your statement that Zenith receivers make unlicensed use of patents you administer can be interpreted as meaning that you intend to continue to employ such statements in the future. If that is the case, then there is certainly no misunderstanding between us nor is there any useful purpose to be served either by a conference or further correspondence on the subject. We are thoroughly familiar with Armstrong Patent No. 411,777, which is the Canadian counterpart of a U. S. patent which has never been considered in
660 our industry as having any validity. This patent has been universally ignored, has never been adjudicated as valid, and has no valid application to our apparatus.

"You say you gather that we may be dealing directly with some patentees regarding licensing arrangements in Canada. I find it very difficult to believe that you are really uninformed about the crossed licenses under all the Canadian patents between Zenith and Radio Corporation of America, General Electric, Canadian General Electric, and Western Electric, as well as Zenith's other direct licenses on important Canadian radio and television receiver patents.

"You actively participated in the litigation which resulted in these licenses, and must be well aware that the activities of Canadian Radio Patents Limited in stopping our Canadian business in past years was at

the very heart of the substantial claim for damages
661 which was settled at the same time the licenses were granted.

"Under the circumstances, we feel shocked that you would publish statements such as those in your advertisement in the August Trade Builder, and I must insist on your assurance that they have been stopped and will not be resumed. Circulation of such statements are directly and seriously damaging to our business, and unless it is stopped we shall be required to take immediate steps to protect our interests. Will you please advise me promptly as to your intentions regarding discontinuing publication of these statements.

"Very truly yours,

"Joseph S. Wright,
"Executive Vice President."

By Mr. McConnell:

Q. Now, in this letter, you state to Mr. McConnell—first, let me ask you this: Did Mr. McConnell answer that letter?

A. I have no recollection of a reply to that letter.

662 Q. You did know, did you not, that he came down and talked to Mr. Crotty?

A. I understand that. Yes, I was aware that he did.

Q. Now, you, in this statement, in this letter, you say:

"You actively participated in the litigation which resulted in these licenses and must be well aware that the activities of Canadian Radio Patents Limited in stopping our Canadian business in past years was at the very heart of the substantial claim for damages which was settled at the same time the licenses were granted."

Now, what was it that Canadian Radio Patents Limited did to stop your Canadian business? I am talking now about Zenith Radio's business.

A. Well, over the whole period of time that I have been at Zenith and up through the incident which is reflected in these documents, there were numerous instances where we had been able to sell token quantities of radio and television receivers to people in Canada for resale. Almost
663 invariably when that happened that was followed by either a threatening letter or a visit by a lawyer representing Canadian Radio Patents Limited to the distributor to whom we sold the goods warning him that he was infringing and that he would be held liable and accountable for it.

Q. Now, did that situation change, and if it did change, in what respect, after the settlement of the so-called Zenith-RCA litigation?

A. Well, the Zenith-RCA litigation in the cross licenses from General Electric and the telephone company and RCA were accomplished in September of 1957. Following that exchange, and on the assumption that we were now going to be able to do business in Canada, as we had tried to do for many years, we went to Canada and made an effort to secure wholesale distributors and other people to participate with us in the marketing of our products and to really build up from virtually no business at all to a thriving business. And we were in the process of doing this and of building a marketing organization in Canada when just about one year later this advertisement appeared,
664 which I must say came as a great surprise to us, because we had assumed that this Canadian Radio Patents Limited situation had been ended with the settlement in the RCA case.

Q. Now, that was also followed, was it not, by the visit of Mr. McConnell?

A. That is right.

665 Q. And what was your understanding of that? As the executive officer of this company, were you advised—

A. It was my understanding that Canadian Radio Patents, Limited still took the position that we required a license from them before we could do business in Canada and that there was only one kind of license available and that was the license that would require us to build all products in the Dominion of Canada and would prevent us from exporting anything made here in Chicago.

Q. Now, would you tell us what you know of your own knowledge from the time you were out there at Zenith of your attempts, if any, to obtain a license from the Canadian Radio Patents, Limited, to import Zenith sets into Canada?

A. Well, I can recall that it was in the early fifties, it was either 1953 or 1954, when I personally became familiar with this Canadian patent situation. When I found out about it, I went back into the records of the company, talked with the people that had engaged in the export

666 marketing, and was informed by them that it had been traditional in Canada that you could not get a license except from the Pool, and that that license was one that required you to manufacture the goods in Canada, and this went all the way back to the 1927 license that we got from the Radio Corporation of America. At that time we signed up with RCA for a license, package license under the patents of RCA, General Electric, and the Telephone Company here in the United States, and we paid a royalty of seven and a half per cent of our selling price.

We exported some of these products to Canada shortly after that, assuming that since these Canadian patents were the counterparts of the U. S. patents almost entirely, that the seven and a half per cent royalty we paid would cover.

We were soon advised, however, and our distributor up there to whom we sold was advised, that this was not the

case. As a matter of fact, Westinghouse, I believe, Canadian Westinghouse, threatened infringement on some
667 Canadian Westinghouse patents as of that time, and we were advised that we would have to pay at that time, I believe, an additional ten per cent royalty on top of the seven and a half per cent here, but that this could only be done in an interim period, but that ultimately we would have to manufacture everytthing in Canada.

Over the years, since there are many markets in the United States which are across very open borders from Canada all the way from British Columbia to theMaritime Provinces, and there are always people coming back and forth, our magazines, our newspapers, our radio broadcasts and television, everything penetrates the Canadian market, we had many inquiries from people who wanted to handle Zenith's goods, either purchase them directly as a consumer or to handle them for resale.

When we entered into arrangements to handle—with people to handle them for resale, invariably, if this in-
668 volved any quantity, they were threatened by the Pool.

And this advertisement which is in the last Exhibit was a typical ad which appeared with great frequency in all of the Canadian journals over a period of at least ten years prior to 1957, and I believe it has been a typical ad that has appeared ever since around 1930.

Now, I can recall one specific instance where we had a distributor in one of the Maritime Provinces, in Halifax. He decided, after we had advised him of the risks that he ran and that probably the Pool would step on him if he took on Zenith, nevertheless, in the early fifties he did handle Zenith. MacCuspie was the man's name.

He immediately received a long threatening letter from the Pool saying that not only he but his customers and any wares that purchased from his customers would be held accountable for infringement.

669 One of the difficulties in this business is that a distributor for resale must make a rather substantial investment in an inventory of goods to handle. He has got to do a lot of work in hiring salesmen and in developing a territory, and we just found that it was impossible to get anyone who was willing to take that sort of a risk with this threat of infringement hanging over them.

I remember another concern that came in very enthusiastic about handling Zenith, because so many of our products had gotten across the border at Seattle into Vancouver, and he wanted to try, and we entered a temporary arrangement with him and, surely, he was threatened by the Pool immediately afterwards. This man didn't have adequate capital, but he was about the only kind of a distributor that we could really get at that time because no one else was willing to take the risk on it.

So we assumed that when 1957 came and we had won this long struggle that had gone on from 1946 insofar as the litigation with RCA and GE and the telephone com-
670 pany that we had solved the problem, and it wasn't until we got this notice in one of the magazines up there that we found out otherwise.

Q. Now, Mr. Wright, let me ask you this: What did Zenith do to try and obtain a license from the Pool to import?

A. Well, I recall on several junctures writing to the Pool myself and asking them for a license which would permit us to import.

Q. What was their reply?

A. Their reply was that this was not available and that they would not grant us a license for that purpose.

Q. You were ready and willing to pay license fees?

A. Yes, sir.

Q. For such a license?

Did you so advise them?

A. Yes—well, I don't recall that I specifically told them that, but we asked them if we could have such a license, and we made that request of them with the full intention of considering it favorably if it could be worked out without this restriction against imports.

671 Q. Now, what was the restriction, actually, what did they tell you you had to do in order to get a license?

A. They said that the only way that you could get a license in Canada was to build your product in the Dominion of Canada.

They said, "We will just wink at imports over a short period of time until you can get your factory started up there, but unless you intend to put a factory in there, why, you can't have a license.

Q. Do you recall who told you that?

A. I believe at the time it was Mr. Stuart Brownlee.

Q. He was then managing the pool, was he not?

A. Yes, sir.

672 Q. Well, now, you have referred to cross licenses with Westinghouse, General Electric and RCA on Canadian patents; did those licenses permit you to import into Canada?

A. Yes, sir, those licenses had absolutely no restriction as to where the goods must be made. In other words, our goods, wherever made, were fully licensed for sale or retail or for manufacture if we wanted to do that in Canada.

Q. So that since the time of the settlement of the Zenith case, which was when, by the way?

A. That was September 8th, I believe, 1957.

Q. You have been able to export under those licenses, at least, your sets into Canada?

A. That is correct.

And another thing that entered into this was the fact that Canadian General Electric has always more or less

run that pool in Canada, was the largest stockholder and provided the management for it, so we had assumed that since we had a license directly from Canadian General Electric under all their patents, that this took care of us.

The Court: You are a lawyer, Mr. Wright?

673 The Witness: Yes, sir.

The Court: To your knowledge, there is no Canadian law that bars the importation of American products for sale in Canada?

The Witness: No, sir.

The Court: All right.

By Mr. McConnell:

Q. And none of the patents of Canadian General Electric or Canadian Westinghouse Electric or Canadian RCA has been forfeited by any government because they have licensed you to import, have they?

A. Mr. McConnell, at one point GE and RCA and the telephone company raised the same point that they couldn't participate in any license from CRPL that permitted manufacture in the United States, but as soon as they settled the lawsuit that was all over and done with. They have themselves been importing goods up there from the United States for years, in large quantities.

Q. All right.

Now, you have told us how you got over your difficulties with RCA, General Electric, and the telephone com-
674 pany. Those were the defendants in the suit, were they not?

A. Yes, sir.

Q. Hazeltine was not in that suit?

A. No, sir.

675 Q. Now, what further difficulty have you had, if any, occasioned by the activities of this Hazeltine outfit?

A. Well, of course, Canada was our primary target for expansion. We are naturally interested in developing our export business wherever we can, because our trademark is known all over the world, and some of our products you will see anywhere you go, and there has always been a demand for them in almost every foreign country that I can think of. After Canada, which was, of course, our primary target because it was so close to the United States and so similar in most respects, we tried to penetrate England.

Q. Well, before we get to England, let's stay with Canada for a moment. Were you able to develop your business in Canada after this settlement in the litigation?

A. We were able to put on some distributors in Canada, particularly in Western Canada, and we developed through Zenith Radio Corporation of Canada our own distribution in Ottowa and Ontario, and I believe Quebec; so we have gradually increased our business in Canada despite the
676 fact that there still hangs over us this threat from CRPL.

Q. All right.

Now, who is the leading producer insofar as number of units are concerned of television in the United States, if you know?

A. I believe it is Zenith, but I don't have access to the unit figures of the other producers, but I think Zenith—we know what our own per cent of industry is, and we have a pretty good idea of what most of our competitors' per cent of industry is, so I think we are generally accepted as being the No. 1 producer in both units and dollars.

Q. And is that true also in radio?

A. I don't believe so in radio. I think we are probably two or three in radio.

Q. Who is the leader in radio, RCA?

A. I don't know, Mr. McConnell. I think that GE

makes an awful lot of very cheap clock radios and small radios, and I don't know.

Q. Would you say in unit numbers that you were up in the first three in radio in the United States?

677 A. Oh, yes, I would think so. We produced last year, I know, over a million and a quarter radio receivers, produced and sold them.

Q. Now, going back to the Canadian market, is the competition that you have in the Canadian market in radio and television comparable to what the competition is here in the United States?

A. Well, it is comparable in one sense, that you are dealing principally with the Canadian subsidiaries of American companies in Radio Corporation, General Electric, Admiral, and to a lesser degree Philips. There are a few Canadian companies in the business who aren't located anywhere else, but the competition is certainly comparable.

I would say that probably in the United States prices are quite a bit lower, and I think that the styling and the features are more advanced than they are in Canada or anywhere else in the world.

678 Q. From your experience in this business with Zenith, have you an opinion as to whether or not, in a free market, without any restrictions of the kind that we are talking about here, you could do proportionately as well in Canada?

A. I don't have any doubt about it, Mr. McConnell.

Q. What is your opinion?

A. Excuse me. I believe—I am convinced that with the kind of quality product we make and the reputation we enjoy both here and in Canada, that taking away these clouds and difficulties that we have had with the Pool, these patent matters, that we could build up to a similar percentage of industry in Canada that we have in the United States.

Q. Now will you tell the court what effect, what residual effect has remained from the activity of this Pool even after the settlement that you made with the three defendants in the Zenith litigation?

A. Well, it is typified by this ad in the Trade
679 Builder. Here is a threat by an apparently respectable organization which is composed of companies like Canadian General Electric and the Telephone Company in Canada and Westinghouse, Philips, the Marconi group, everyone that handles our product from the user on up to the distributor is going to be sued. This has a serious effect on your ability to get the kind of distributors that you would need to do the kind of marketing job that we have been talking about, to be able to get them to make the kind of an investment and do the promotion and the advertising and to build a sales force that will do it.

Q. Can you tell us whether or not you know, if you know, the sets that would have been purchased by distributors that were in their hands would be subject to forfeiture in the event that they lost the patent infringement suit to this Pool?

A. Yes, the Canadian patent law has some very, very
680 rough provisions for someone that is found guilty of infringing. I don't recall precisely what they are. I know they are much more drastic than—it is my impression that they are more drastic than the comparable provision of our own patent laws.

The Court: Mr. Wright, would this ad, in your opinion, cover, say, General Electric's imports? Would that be a threat to—

The Witness: Well, your Honor, I believe you will find Canadian General Electric is listed as one of the acceptable companies in there along with the Radio Corporation and the others who are licensees of CRPL.

The Court: Yes, but the imported sets don't get their

licenses from the Canadian subsidiaries. They are manufactured in this country and are imported and therefore not under these licenses, are they?

The Witness: Well, your Honor, my own opinion of this story about the Canadian patent law is that it is just a
681 screen to cover up what they wanted to do, to keep imports out of Canada. I don't think anyone can read the Canadian patent law and get any conclusion that this law results in the forfeiture of patents if someone permits imports under it. They know this and they have known it for years.

682 The Court: Well, isn't it the tenure of this ad that this tends to bar anything that isn't made in Canada by one of these companies?

The Witness: That is exactly right.

The Court: Well, anything made in this country by General Electric or RCA doesn't come under the terms of that, does it?

The Witness: That is exactly right, and we are talking, your Honor, about sets that we paid the Canadian duty on and cleared through customs and—

The Court: I am not concerned about Zenith sets, I am concerned about those companies that have cross licensing and which you say now are shipping sets up there and they are not being bothered in regard to the sets that they shipped up there.

Mr. McConnell: They are not included in this ad, your Honor.

The Court: What—

683 Mr. McConnell: The Canadian Admiral, Canadian General Electric, Canadian Marconi, the Telephone Company, they are noted in the ad as being covered by the Pool so they are told in this ad that the Pool is not attacking them, only companies that are not on this list. Now, Zenith is not on this list. This is notice to the world that Zenith is fair game.

The Court: Admiral, Limited isn't making the sets, they are being shipped to Canada, aren't they?

The Witness: I believe, your Honor, that most of Admiral's sets are made in Canada.

The Court: I am talking about the imports. You indicated awhile ago that there is a flood of merchandise crossing the border which apparently is proscribed by this.

Mr. McConnell: That is right, but they are not proscribing it against these particular companies.

684 The Court: I understand that, but if they are made in America by General Electric or RCA under American General Electric and RCA patents, isn't that a violation of that?

Mr. McConnell: Well, this only purports to be a notice to the trade, and people who are in the trade, that if they do not get their sets from these companies on this list they are in trouble with the Pool. Now, Admiral—

The Court: Is it your position that these people on the list are selling American made sets?

Mr. McConnell: In certain instances, yes, but they are not proscribed, we are.

The Court: I understand that, but I thought perhaps these American made—this American made merchandise was shipped right to a retailer from America rather than going through somebody on the list.

685 Mr. McConnell: Well, our indication is—

The Court: This has nothing to do with the lawsuit, but it arouses my curiosity.

Mr. McConnell: I know.

Well, the fact is that all these companies import into Canada, but the only one that gets proscribed is a company like Zenith that doesn't have a license because we don't manufacture anything in Canada, and we cannot get a license; no matter what we offer for it, we can't get it because we are not doing that business.

The Court: Let's go on to the next question. I am sorry I brought it up, since I didn't get an answer.

Go ahead, since it makes no difference anyway.

By Mr. McConnell:

Q. To what extent has your business been interrupted in exporting sets to Canada by the activity of this pool since your settlement?

A. Well, this is always a very difficult thing to say
686 what might have been had the circumstances been other than what they have been, so that I can only answer that by stating that I feel that if we had not been subject to think of pressure in the trade among dealers, among distributors and among customers, that we would certainly, over this period of time, have built up a business that would have been comparable in Canada to what we enjoy here in the United States.

Q. You mean that you would have an eqaul percentage of the business in Canada against that competition?

A. That is right, that is correct.

Q. I show you a document which is marked Defendant's Exhibit No. 71, which purports to be a license agreement under the A.7 pool in England and call your attention to the recitation of the grantors, and I call your attention particularly to the reference to a company called Pye, limited. Do you know that company?

A. Yes, sir.

Q. Who is the chairman of the board of that company?

687 A. C. O. Stanley.

Q. And what does the company do?

A. Pye is one of the quite large and aggressive and good companies in England that manufactures radio and television apparatus, communications equipment.

Q. Can you look at that document and tell us whether or not Pye is a member of the British Pool, the A.7 pool? You will find that in the—

A. Yes, the standard license here, the license A.8T is between the EMI, General Electric, Limited, Marconi Wireless Telegraph Company, Limited, Murphy Radio, Limited, Philips Electric Industries, Limited, and Pye and Rank Cinetel, Limited, and Standard Telephone and Cable; those are the pool members who are granting this license under this form.

Q. All right.

Now, do you recall a conversation which you had in England, in London, with Mr. C. O. Stanley with reference to this pool?

A. Yes, sir.

Q. And where was that?

A. I had several conversations with Mr. Stanley;

688 I had one in his home; I had one when I had dinner with him—this was in, I would guess, around July or 1955, late June or early July of 1955.

Q. Did you make any inquiry of him as to whether or not there was any method whereby Zenith Radio could be licensed to import radio or television sets into Great Britain?

A. Yes, I did.

689 By Mr. McConnell:

Q. Now, would you tell the Court what that conversation was, what was said?

A. Well, I asked him about the policy of the Pool which we were already familiar with. They required that sets be made in England, and that nothing would be licensed if it was imported from abroad, and I confirmed with him that that was what the situation was and asked him if there was any possibility of any modification in the future.

Q. What did he tell you?

A. He told me that he saw no possibility that that would be modified.

Q. Now, since the lawsuit which we have been talking about, has Zenith made any effort to sell radios in England?

A. Yes, we have.

Q. And with what results?

A. Well, we made an arrangement with a man—I've forgotten the name of the company; the man's name is Adam Ramsey, who is the owner of it, or the proprietor of the business, who has been over here many times at our
690 conventions and has been very enthusiastic about the possibility of developing our business in England.

And he has wanted to go ahead with us as a distributor to bring about the widest exploitation of that business. We informed him, of course, as to what our experience has been previously in England, efforts to import things into the country, and to get a license that would permit such imports. And he—

Q. Tell us what your experience had been?

A. Well, our experience previously had been that when someone would buy a few receivers for resale in England, that as soon as that word got around among the trade, someone from the pool either called or wrote a letter, and called his attention to the fact that we were not licensed by the pool and that infringement actions would result if the goods were resold.

I informed him about that, and he was willing to take a chance to go ahead and see what he could do, at least in the field of radio, to see what the result of this would be.

He was, as I recall, unwilling to try to invest much in
691 the television business because this required too large an inventory speculation for him.

Apparently the pool has not bothered him insofar as radio is concerned, and I am not surprised at that because,

actually, there are hardly any radio patents left that anyone would seriously think of threatening infringement with.

Q. All right. Have you made any effort at all to go into the English market with television?

A. Well, we have only sent a very few television receivers to Mr. Ramsey, which he has attempted to market But we have not made any effort on television because we were informed that the pool license then in effect, and there was no possibility of getting such a license.

The Court: Since you were a manufacturer here, you couldn't sell any, could you?

The Witness: Yes, sir.

The Court: Would it function?

The Witness: Well, yes, sir. Sometimes we have to
692 make minor modifications in these sets. They use a slightly different system in England.

The Court: That's what I mean.

The Witness: But these are modifications that aren't too difficult, ordinarily. It is just like having another model on the line. I believe in England they have a different number of lines, and they use AM sound instead of FM sound, but these are modifications. We have the same situation—

The Court: I mean one off your line here wouldn't function in England.

The Witness: No, sir.

693 By Mr. McConnell:

Q. You could set up a line that would?

A. Oh, Mr. Ramsey in the back room of his little establishment could make the simple repairs and alterations that are necessary to make this work. We supply him with parts and kits to do that at times.

Q. Now, is the competition in England comparable to what you have in the United States?

A. Well, in England it is a little different. I don't

know that I understand your term comparable. There are different companies that are involved. We are dealing with roughly the same products.

In England, the leading companies are Pye and English Electric, and Philips, and Marconi, and, oh, there are several other English companies.

Q. You have seen their products on display, haven't you?

A. Oh, their products look—their current products look like the products that we were selling three, four, five years ago.

Q. Would you say your product was superior to theirs?

694 A. Yes, no question about it; not only in design, in construction, but in styling.

Q. Well, have you an opinion as to whether or not you could obtain a comparable share of the English market if you were free from the restrictions which we have been talking about here?

A. Well, I think we could attain a fairly respectable share of the British market. But I can't say that I think we would get, say, around twenty per cent of the market that we get here in the United States. The distances are too great.

But I think—I don't have any question in my mind that we could do a substantial share of the British business if we were given an opportunity to compete without these restrictions.

Q. What proportion of that market do you think you could attain?

A. I would say we could get a half of our per cent of the industry in the United States. In other words, if we did twenty per cent here, I would think that we could
695 build up to a ten percent share of the British market.

Q. In other words, transposing ten per cent of the

market here to there, you would have ten per cent of their market—against their competition?

A. That's right—no.

The Court: Well, in regard to price, having in mind the difference in cost of production and the cost of putting it in the dealer's store in England, at what disadvantage would you be?

The Witness: We would be at some disadvantage, your Honor. That is one of the factors that I was taking into account when I said we would—our potential would be less than it would be in the United States.

But, actually, the price levels in England have been higher than they have been in the United States. And, of course, in Canada that has been substantially so.

The Court: All right.

696 By Mr. McConnell:

Q. Can you tell the court what these three companies that were sued by Zenith paid you for damages—paid your company for damages for the time up to the settlement of that suit in 1957?

A. Ten million.

Mr. McConnell: You may cross-examine.

The Court: That covered what—the countries?

Mr. McConnell: That was for damages in Canada.

The Court: All right.

Mr. Dodds: I don't have a copy of the Exhibit that you were examining Mr. Wright—

Mr. Curtis: It is up there.

Mr. Dodds: No, it isn't that one. It is the one that included the notice—

The Court: The telegram and all?

Mr. Dodds: Yes. This is it.

The Court: All right.

697 *Cross-Examination by Mr. Dodds.*

Q. Taking last things first, Mr. Wright, do you know what the customs duty on a set imported from the United States—a television set from the United States to Canada is?

A. Well, my recollection is that it is 20 or 22½ per cent, something like that. I could be off on that, Mr. Dodds.

Q. How about England?

A. I don't recall the tariff in England. It is probably—

Q. Do you think it is more or less?

A. Well, it may be just a little more.

Q. And how about Australia?

A. Oh, I did have that figure on Australia.

The Court: He's talking about tariff, not anything else.

Mr. Dodds: That's all; just tariffs.

By the Witness:

A. I did have that but, you know, these things change, too.

By Mr. Dodds:

Q. Yes. It's on the order—

698 A. I can get that information for you very quickly.

Q. It's somewhere between 20 and 30 per cent, anyway?

A. That's my recollection of it. It may have been lower than that in Australia. I'm not sure.

Q. Now, if you are going to export a set to Australia, what would be a typical transportation cost in terms of percentage of your selling price?

A. Mr. Dodds, we never got that far in Australia.

Q. I don't believe that answers my question. Do you know or do you not know?

A. I do not know.

Q. Do you know what the transportation cost would be in shipping a set to England, as an average percentage of cost?

A. No, sir, I do not. I think you would find this would depend on the quantity in which you send them—

Q. But you don't have any idea whether it is 5 per cent or 50 percent?

699 Well, I don't know. I'm sure it's not 50 per cent. I would be surprised if it is 5 per cent.

Q. Well, how are you sure it is not 50 per cent if you have never investigated?

A. Well, I have seen some breakdowns of our costs of doing business in connection with our radios that we sell in England. And I am sure if it had been 50 per cent, it would have struck my eye and I would have remembered it.

Q. How about Australia?

A. I just don't know. I have never seen it.

Q. Now, in this Defendant's Exhibit 138, your telegram to CRPL, the notice and reply, the companies listed there are all Canadian companies, are they not?

A. I don't know whether they are or not.

Q. Well, would you review it and see if you find any that are not Canadian companies.

A. I see an awful lot of them that are subsidiaries of, obviously, American companies.

Q. Well, that wasn't my question, Mr. Wright. The question is whether those companies are Canadian

700 companies.

A. I don't know.

Q. Do you recognize any that are not?

A. No, sir. I don't know where these companies are organized.

Q. Is it customary for a United States corporation to end up with the term "Ltd."?

A. A United States company—

Q. Yes.

A. It's not customary.

Q. No. You don't know of any of those that are U. S.

companies? You don't see any of those that you know are U. S. companies?

A. I don't know as to any of them. I do know that Canadian General Electric is a Canadian company. I know Canadian RCA is a Canadian corporation. I believe Canadian Westinghouse is. These are the ones I know. As to the others, I don't know.

Q. How about Canadian Admiral Corporation?

A. I don't know.

Q. How about Canadian Marconi Company?

A. Yes. I believe that is a Canadian company.

Q. Do you know about Dominion Electrohome Industries?

701 A. I understand that it is a Canadian company.

Q. Do you know anything about Emerson Radio of Canada, Limited?

A. No, sir.

Q. Do you know about Hallicrafters (Canada) Limited?

A. No, sir.

Q. Do you know anything about a Northern Electric Company, Limited?

A. That is a Canadian company.

Q. Do you know about Philco Corporation of Canada, Limited?

A. That I understand is a Canadian company, although I don't know.

Q. I think you did mention RCA Victor Company, Limited?

A. That is a Canadian company.

Q. Have you ever seen a license agreement from CRPL to any of these Canadian companies?

A. Yes, I believe I have.

702 Q. Does that license restrict their importation of U. S.-made apparatus?

A. My recollection is it restricts the importation of any

—nothing is licensed under this which isn't made in Canada, which would restrict U. S. or anything else.

Q. So that if Canadian General Electric Company were to import television sets from its American parent company, the General Electric Company, and sell them in Canada, it would not come under their license with CRPL, would it?

A. Presumably not. It wouldn't be in accord with the terms of the agreement.

The Court: Thank you for giving the answer for me.

By Mr. Dodds:

Q. Now, let's talk about radio. I think I understood your testimony that there aren't any radio patents still in existence that are really worth talking about; is that about right?

A. That was my testimony. But Mr. Dodds, I'm not a patent lawyer or patent expert, so I don't want to—

Q. I will put it this way. You don't have any
703 knowledge to the contrary. You don't have any knowledge of any patents that are of substantial importance in sound radio at the present time, do you?

A. I do not have any knowledge of such patents.

Q. Now, have you had difficulties in exporting radio sets to Canada? Have you had difficulties with CRPL?

A. Well, yes, over a long period of time. See, we didn't get into television until about 1949. So that all our difficulties were exclusively about radio. And my recollection is that the problems we were having in the fifties involved radio as well as television. But they made no distinction.

Q. That is the question I wanted to know. When did you stop having troubles with Canadian Radio Patents Limited about radios?

A. I don't think we ever stopped having trouble with Canadian Radio Patents Limited about anything.

Q. Now, Mr. Wright. if there are no patents, worthwhile patents outstanding on radios, how can CRPL
704 give you any trouble in exporting radios to Canada?

A. Mr. Dodds, certainly, as you know, there are many, many, many thousands of patents that purport to relate to this art. And nothing can prevent a man from asserting a patent and threatening infringement on it. This is done quite frequently. And as a matter of fact, this has been done by the Hazeltine Corporation. It's been done by Canadian Radio Patents Limited.

You never have any way of knowing whether the patent's valid or infringed or not until you have got it through litigation.

Q. Mr. Wright, I could sue you tomorrow on a patent which I don't own. I wouldn't stand much chance of collecting, but that's theoretically right. I can sue you, can I not?

A. I guess paper won't refuse ink.

Q. That's right. And do you think it would be good business to bring suits on patents that didn't have any relation to radio sets which were being built?

A. Would you read that question again, please.

705 (Question read.)

By the Witness:

A. No, sir.

By Mr. Dodds:

Q. Do you recall when was the last time in which any dealer or prospective dealer of Zenith in Canada complained about interference by the Canadian Radio Patents Limited with respect to radio sets?

A. The last I recall on this, Mr. Dodds, was shortly following this Trade Builder ad, about which was the subject of this—

Q. In 1958?

A. In 1958. We had a number of our distributors who were handling our products in Canada who came to us and were greatly concerned as to what the future held, whether they were going to be subject to this litigation.

Q. I don't think that quite answers my question. I asked you when, if you knew, was the last time any of your dealers or prospective dealers was interfered with by CRPL because of importation of radio receivers.

A. Well, if you will notice this ad of Trade Builder,
706 it covers radio receivers, television receivers, and that is the last instance that comes to my mind.

707 Q. I move that the answer be stricken. What I asked—

The Court: It will be stricken.

By Mr. Dodds:

Q. When was the last time that the CRPL interfered with one of your dealers or prospective dealers. I am not talking about ads in papers.

Would you read the question back—

A. I don't understand what you mean by interfered.

Q. Made a direct threat either orally or by correspondence, or had any communication with your dealer or prospective dealer with respect to importation of radio receivers into Canada.

A. I don't recall any specific threat of litigation over radios alone in the last few years. I don't—I can't—

Q. Perhaps back to about 1958?

A. Yes, sir.

Q. Well, what have you done toward building up your distribution of radios in Canada since 1958?

A. Well, we really handle radio and television to-
708 gether as a distribution thing; the same concern will handle both of them together. We have gone to Canada, and we have talked with many wholesale distributors about the possibility of their taking on our line of radio,

and television, and hi-fidelity, and phonograph instruments, and about the investment that would be required in it, and the kind of organization, staff, and territory which they would be expected to be responsible for.

We have appointed such distributors in virtually all of the western provinces. We have not been able to find that kind of distribution in the central provinces, and we have been trying to handle that through our own subsidiaries. We have done that same thing in the Maritime provinces, although we have had some difficulties in getting adequate distribution in that area.

Q. Well, now, have you made any attempt to distribute your radios and phonographs and hi-fidelity without accompanying the television—without television distribution?

709 A. I can't recall of an instance where we have done that in Canada.

Q. You made no attempts to do that?

A. No, sir.

Q. All right. Now, let's come to England. When was the last time when the British Pool interfered with a dealer or prospective dealer of Zenith with respect to importation of radio receivers into Enlgand? And by interfere, so that there will be no misunderstanding, I mean made any sort of direct approach, oral, correspondence, or other threatening approach, neglecting general advertisements or notices in the trade press?

A. Well, we were completely cut out of England, where we did no business whatever until, I would say, from a period—of my knowledge of the company—from the end of the War until approximately 1958 is my recollection—or '59 perhaps, when the current man who is representing us over there on some products took on the job of trying to build up some distribution there.

710 So I recall no threat in that period of time, except for the oft repeated statement that there was no other possibility of doing any distribution there except by having such a license, which, of course, precluded imports.

Q. Well, did you make any attempts to establish a distribution of radios only in Great Britain?

A. Well, not prior to the time we took on—well, wait a minute. We made such attempts in the thirties and then—

Q. Let's talk about '58 on. I think that was the time we agreed—

A. Yes. '58 on, we talked to several men in England.

Q. On radios only?

A. Yes. Only one of them—well, we talked to them about all of the products, but we were given to understand that television was just out of the question.

Q. How about radio? Was it out of the question?

711 A. No. Mr. Ramsey felt that he was willing to take a chance and bring radios in without a Pool license, and felt that perhaps he could build up some distribution then.

Q. And has the Pool bothered him in that importation of Zenith radios?

A. I don't know of an specific acts that they have taken with reference to his limited distribution.

Q. All right. Now, let's go to Australia. When was the last time that any dealer or prospective dealer of Zenith radios in Australia was threatened directly, either overtly or by correspondence by ARTS—you know what I mean by ARTS, I assume?

A. Yes, sir. We haven't had a dealer in Australia since, I would say, going way back to the early thirties or the late twenties. I have talked with several people in Australia about the possibility of setting up an enterprise. These talks have been over a period of four, five years, and

always I have gotten the same story from them;
712 namely, it is going to be bring in finished sets from the United States. Perhaps we can bring in some components, but it is going to be necessary, to do any business in Australia, to set up a factory there.

713 Q. Have you spoken with people in Australia about the importation of radios and phonographs and high fidelity only?

A. Well, I would talk to them about everything we produce, and those are the principal products.

Q. Well, what I meant—my question was, have you discussed with them, or explored the possibility of distributors for radios, phonographs, and high fidelity equipment without, at the same time, distributing television sets?

A. No, sir, I don't recall that.

Q. And still on Australia, do you know whether the Zenith Radio Company ever asked ARTS for a license?

A. I have a recollection that we had some correspondence with them, Mr. Dodds, but I can't tell you when it was.

Q. You don't have any knowledge that ARTS ever refused Zenith a license, do you?

A. I don't recall that.

Q. Do you know, or do you not, that ARTS has licensed the Admiral Corporation to import television receivers into Australia?

A. It was my understanding that Admiral was
714 given the right to import a few in the beginning, but on the understanding that they would build a factory there to build their receivers, which I understand they have done.

Q. You don't—I will ask you this: Do you know of any concern that has been refused a license to import television receivers into Australia?

A. Well, as I recall it, Mr. Dodds, we were thrown out of Australia in either the late twenties or the early thirties

by the pool activity. And the people that have been handling our goods said they couldn't do it any more because of these threats.

Q. Well, Mr. Wright, the twenties and the thirties are some thirty years ago. There is a lot of water over the dam.

Have you been refused, say within the last 20 years, a license to import television receivers into Australia?

A. I can't recall that we made a specific request of the pool directly, but I have discussed this matter with many people in Australia with a view to distribution, and
715 there was no question in their mind that we could not get such a license, and there was no use talking about any sort of arrangement that contemplated that.

Q. You say you talked with people. Who did you talk with?

A. Well, I can recall talking with officials of Stromberg-Carlson in Australia, Mr. Beam. I can recall talking with the head of a company that makes components in Australia and is a licensee of ours in another area—Mr. Webb of the Rola Corporation.

Q. Did you talk with anybody at ARTS?

A. No, sir.

Q. Did you ever talk to Mr. Gilmore?

A. No, sir. I don't know Mr. Gilmore.

Q. You don't know Mr. Gilmore who is the manager of ARTS?

A. No, sir.

Q. Mr. Wright, on what basis did you answer the Court's question that the Canadian Patent Act did not prohibit importation of television receivers made in the United States? I understood you to say that. If I misunderstood, correct me.

716 A. My answer was based on—I must hasten to say that I'm not admitted to the Canadian bar and not an

expert in Canadian law. But I have been admitted to practice law in the United States and have practiced law for most of thirty years.

I have read and studied the Act, and read and worked on and seen many briefs on the subject, and that is my opinion. The Act nowhere—there is nothing in that act which supports the construction that a patent can be forfeited because someone imports into the country.

Q. Is that your own conclusion, or is that what someone told you?

A. Well, I'm talking now about what my own conclusion is, sir.

Q. I think reference was made to a Canadian subsidiary of Zenith. I don't remember the title.

A. Zenith Radio Corporation of Canada, Limited.

Q. Has it ever been sued for infringement by CRPL for importation of U. S.-made radio receivers?

A. No, sir. You see, Zenith Radio of Canada never sold a radio or a television receiver in Canada until after
717 the 1957 decree. They were—their primary business was in hearing aids, which we have supplied to Canada for years and years and years through that corporation.

Q. All right. Then in the six and a half years since September—I believe it was September 8, 1957—has Zenith Radio Corporation of Canada been sued for the sale of imported radio receivers?

A. No, sir. But as you will note in this exhibit, Mr. Brownlee stated that he had been over to see Mr. Kiely, and told him that he thought we needed the license, and that we were infringing the patent of CRPL. Mr. Kiely was the general manager of Zenith of Canada.

718 Q. Well, that was, as you say, September of 1958?

A. Yes, sir.

Q. By coincidence, almost contemporaneous with the decree—no, it was a year after the decree, September 1958,

some five and a half years ago, but in spite of that CRPL never sued the Zenith Canadian company for importation of either radio or television receivers, has it?

A. No, sir, I believe it was about that time that—

Q. You have answered my question.

Now, there has been a lot of general testimony with respect to sales of radio and television receivers in Canada and England particularly, not in Australia; do you have any figures of those sales year by year?

A. I don't have them with me, but we—

Q. Could they be made available, say, since 1950?

A. I am sure they can be made available.

Q. And I think it would be interesting to compare the sales since 1950 in England, Canada and Australia with
719 the sales or exports to other countries that are not involved with apparently troublesome patent pooling organizations; could that information be made available?

A. I am sure it can be prepared, Mr. Dodds.

Q. I would like to ask if it may be done.

Let's come back to England for a minute: Do you know that, if any, patents, British patents owned by Hazeltine would prevent Zenith from distributing monochrome television receivers in England?

A. No, sir.

Q. They never had an investigation made?

A. I don't recall such an investigation. There may have been one made, but I didn't ask for one and there seems little point in making a long and expensive patent search on the thing when there is no possibility of getting a license anyway.

Q. Well, if there are no patents you don't need a license, do you?

A. No.

Q. You haven't made an investigation. You don't know of any investigation?

720 A. I don't know. There may have been one made, though. I don't want my answer to stand for the fact that one wasn't made.

Q. Do you know whether or not at the present time there are any color television sets on the market in England?

A. No, sir, I don't know. They have been talking about color, but whether they have authorized it as a service regularly, I don't know.

Q. Maybe you anticipated the second question; do you know whether Great Britain has established a standard of color television transmission?

A. I don't know that they have.

Q. Well, now, in connection with your efforts to build up your business in radio and television in Canada, I noticed in going through some of the correspondence files quite a volume of correspondence between Zenith and dealers and prospective dealers and some relating to their troubles with CRPL; do you know whether or not that volume of correspondence has been fairly uniform over the years?

A. I don't know whether it has or not.

Q. Well, do you—

721 A. It goes back to at least 1927, that I know of.

Q. Was there any particular period when Zenith made a concentrated effort to build up its Canadian business, say, by an advertising program or such?

A. Well, Mr. Dodds, we have been under constant pressure on this Canadian thing ever since the beginning, because the Saturday Evening Post goes to Canada, the Colliers, a great many newspapers and everything, and we have got many cities where they are almost twin cities like Windsor and Detroit and Vancouver and Seattle—

722 Q. I appreciate that, but I don't think that answers my question. My question was, do you recall of any

special concentrated effort in any period of time to build up your Canadian business in radio and television receivers?

A. No, sir. After we—we had to tell everybody that came and wanted to buy from us about this risk prior to 1957.

After 1957, then we did make a concentrated effort, because we had assumed that we now were on a regular basis where we weren't under this handicap. Then we started making a concentrated effort, because we thought that our distributors and dealers could have some assurance that they could be permitted to build up their business without threat of litigation.

The Court: That's provided you didn't use patents of Marconi or Hazeltine or something.

The Witness: Absolutely, your Honor. We had taken a license under some individual patents that we thought were important up there, including the Parker patent that 723 was referred to here this morning, which is under CRPL. We take a license and pay a royalty on that when we ship sets to Canada.

By Mr. Dodds:

Q. The reason that I asked the question, Mr. Wright, if you refer to Defendant's Exhibit 179, which is a collection, a bulk Exhibit of correspondence between Zenith, its dealers and prospective dealers—I wouldn't want to estimate in there, but I would guess there are perhaps fifty or seventy-five—

The Court: Dealers where, Mr. Dodds?

Mr. Dodds: In Canada.

The Court: All right.

By the Witness:

A. I see a lot of these relate to whether we were going to establish a factory in Canada.

By Mr. Dodds:

Q. Well, they were inquiries from dealers or prospective dealers, correspondence with them, I believe.

A. Yes.

724 Q. Well, now, I estimate there is somewhere between fifty and seventy-five in there.

A. I would accept your count or estimate.

Q. I didn't count them. I estimated.

I personally inspected the correspondence files supplied by Counsel for Zenith in this particular field supposedly going back from the beginning up to date, and I would say that this volume, in a period largely within—the bulk of it within '55 and '56 was more than all the rest combined. Do you have any way of accounting for that?

A. No, sir, I would be surprised at that.

Q. There was no special advertising campaign?

A. No, sir.

Q. Or a "write your Congressman campaign"?

A. No, sir, under no circumstances, and everybody that inquired we had to tell them frankly what the risks were if they did business with us.

725 Q. You have no way of accounting for the concentration of nearly all of this correspondence in a period of about two years?

A. No, sir—well, I am not sure that it did.

The Court: Well, assuming that it did, you can't account for it.

The Witness: No, sir, that is right.

The Court: All right.

Mr. Dodds: Now, your Honor, there are a few questions that I would like to ask Mr. Wright which are not in the scope of the direct. If Mr. Wright will be available, I would like to call him—

The Court: You intended to call him as an adverse witness, is that it?

Mr. Dodds: Yes.

The Court: Have you any objection to him asking questions of him—

Mr. McConnell: Not at all, your Honor.

Mr. Dodds: On the other hand, I think if Mr. Wright is going to make some of these figures available, maybe it would be just as well to combine it with them at that time.

726 The Court: Do you have any more questions?

Mr. McConnell: I have one or two. I wish we could finish with Mr. Wright, because he has out-of-town engagements.

Mr. Dodds: I assume that Mr. Wright will be available.

You are not going to Europe or Japan?

The Witness: Actually, my family is away and I was hoping to get out tonight and meet them and be back on Monday, so it would be a real favor to me if we could conclude.

The Court: You don't intend to call him tomorrow?

Mr. Dodds: It depends on Mr. McConnell. He indicated the last time that we talked that he expected his prima facie case to take two weeks, so we wouldn't be calling any witnesses until after that.

Mr. McConnell: We will be through with our prima facie case tomorrow.

The Court: I was about to make an inquiry as to 727 if we were making the progress that you anticipated.

Mr. McConnell: We are way ahead of what I thought. We are going to be through tomorrow.

Mr. Dodds: Well, I certainly don't want to inconvenience—

The Court: You are not going to finish your defense tomorrow, are you?

Mr. Dodds: Tomorrow?

The Court: Yes.

Mr. Dodds: I would not expect so. As a matter of fact, I—

The Court: Can we excuse this witness until Monday?

Mr. Dodds: Yes.

The Witness: Thank you very much, your Honor.

Mr. McConnell: I had one or two questions.

The Court: Oh, yes, he has one or two questions and then you can go until Monday.

The Witness: Thank you, sir.

728 *Redirect Examination by Mr. McConnell.*

Q. You started to say something about the Parker patent; what is that patent?

A. The Parker patent is a patent on what is called intercarrier sound, and I am not an engineer so I can't tell you precisely what that is except that it was a new and ingenious way of doing something that had to be done with the signal, and it represented a substantial saving over the way the industry had been doing it. We took a license under the Parker patent here in the United States some time, I believe, in the fifties and paid a royalty, and we also took a license under the Parker patent which permits us to export out of the United States to any foreign country for, I believe, an extra ten cents a set.

729 Q. Well, are you licensed under the Canadian Parker Patent?

A. Yes, sir.

Q. To export from the United States into Canada?

A. Yes, sir.

Q. Now, you were asked about what you knew about the legality of restriction on imports; did you find out what the opinion of the general counsel and the lawyers for RCA was on that subject?

A. Yes, sir.

Q. What was their opinion?

A. Well—

Mr. Dodds: Your Honor, I object. That is pure hearsay.

Mr. McConnell: Well, you asked him about what he knew, where he got his information.

Mr. Dodds: If he wants to tell that he got it from the RCA lawyers, I think that is appropriate, but asking that opinion is, I think is something else.

Mr. McConnell: You asked him where he got his opinion, what it was based on and—

730 The Court: The objection is overruled.

Go ahead.

By the Witness:

A. I recall a memorandum from Ira C. Adams, who was the head of the patent department of the Radio Corporation for many years when this Canadian thing was set up, and it is my recollection that he stated that the efforts to make this Canadian patent law look as if it were—the "working condition in Canada provisions" of the Canadian patent law look as if they prevented imports was just not true, that it couldn't be sustained.

By Mr. McConnell:

Q. Was he head of their legal department?

A. I believe at the time he was vice-president in charge of patents for the Radio Corporation of America, and lawyer.

Q. Did you get any other expressions from the other lawyers of those companies, General Electric and RCA?

A. I don't recall any other from their lawyers. That one stuck in my mind because it was different than
731 the position they were taking in the lawsuit.

Q. Well, do you recall that there was research made

on that subject and opinions taken from lawyers in Canada at the time of Zenith litigation?

A. Yes, sir.

Q. And did you consult any lawyers on that subject then.

A. Yes, we consulted Canadian lawyers at the time and we were advised by these Canadian lawyers to the effect that the "working in Canada provisions" of the Canadian Patent Act were primarily designed to prevent a situation where the Canadian Government would, by virtue of giving a man a patent monopoly under the state, would then be able to deprive the Canadians of the benefits and uses of this invention by taking out a patent but then refusing to work the patent in Canada or permit it to be used there and that—

732 Q. Well, did they give you an opinion—

A. —that this could not be stretched to the point where it would prevent imports so long as there was production and so long as there was trade and the benefits of this invention were freely available to the people of Canada, there was nothing in that act which would prevent importation under a license.

Q. Now, you were asked whether you or your distributors had been sued for infringement in Canada and you said, "No, sir," and then you started to say, "I believe it was about that time—" and you were cut off by counsel. Was there something else that you wanted to add to that?

A. Would you read it again to me, sir.

Q. Well, you were asked whether or not any of your distributors or dealers had been sued for infringement and you said, "No, sir. I believe it was about that time—" and then you were cut off by counsel; did you have something you wanted to add here, to qualify that?

A. I don't recall what I had in mind, I am sorry.

Q. All right.

733 Mr. McConnell: Where is that correspondence that you were talking about?

The Court: Let's take a five-minute recess. I have got another matter set.

(Thereupon a short recess was taken, after which the following further proceedings were had herein, to wit:)

734 The Court: You may proceed.

By Mr. McConnell:

Q. You were asked on cross about a Mr. Kiely, Lloyd B. Kiely. Who is he?

A. Mr. Kiely was the general manager, I believe, of Zenith of Canada whom we appointed to handle the distribution of radio and television in Ontario and some of the central provinces. Prior to that time, the general manager had been a man named Pratt who had just had hearing aids.

So we appointed another man to take care of distribution of radio, TV and phonographs.

Q. I show you a document which is marked here Defendant's Exhibit No. 151, which purports to be notes of a conference between McConnell of Canadian Radio Patents, Limited, and Kiely and Capell. Who is Mr. Capell?

A. Mr. Capell is presently the vice-president and general manager of Zenith of Canada. I believe at that time we had hired him as a consultant. He had been in the business of radio and television distribution and manufacturer
735 in Canada for many years. I believe he was head of Philco of Canada prior to the time he came with us.

Q. I show you a document and ask you if you can tell us from whom you received it?

A. I received this from Mr. Kiely.

Q. Did you read it?

A. Yes, sir I did.

Q. And what is the date of it?

A. The date is July 30, 1958. That is several months prior to the ad we—

Q. That was a report received by you in the ordinary course of your business as president of this company?

A. Yes, sir. I believe when Mr. Kiely was first approached by Mr. McConnell, he called me on the telephone and told me he had been. I suggested that he go ahead and meet him and see what they had to say, and try to bring him up on the background of the patent situation so that he would—

Q. And this is the result of that conference?

A. Yes, sir.

736 Mr. McConnell: I am going to offer this document in evidence, if the court please—a report that was received in the ordinary course of business of Zenith Radio Company—as Defendant's Exhibit No. 151.

Mr. Dodds: No objection.

The Court: It may be received.

(Said document, so offered and received in evidence, was marked DEFENDANT'S EXHIBIT NO. 151.)

Mr. McConnell: And I would like to read it:

"Conference
"Canadian Radio Patents Limited
"Mr. B. McConnell, President
"Zenith Radio Corporation of Canada, Ltd.
"Mr. L. B. Kiely, Mr. S. L. Capell
"Date: July 30, 1958
"Place: Toronto Board of Trade
"Time: July 30, 1958, 11:00 a.m.

737 "Mr. Brian McConnell, President, Canadian Radio Patents Limited, 200 St. Clair Avenue West, Toronto, phoned me on July 25, for the purpose of setting up an appointment to discuss matters of mutual concern. I advised Mr. McConnell that July 30 would be the earliest date possible and that I would confirm this date on the morning of July 30, to be sure both parties were available.

"Mr. S. L. Capell and I had other business downtown on July 30. Therefore, Mr. Capell accompanied me to the Board of Trade to meet Mr. McConnell at 11:00 a.m.

"Mr. McConnell opened the discussion with the suggestion that he would like to know more specifically what Zenith plans and objectives are in Canada, as he and his group had no further knowledge than had been published in various news releases.

738 "Mr. McConnell wished to determine:

"Were Zenith importing sets now? He understood such was the case.

"Was Zenith planning to set up Canadian manufacturing at some future date?

"To the first question, I answered: 'Yes, Zenith are importing sets into Canada now.'

"To the second question, I answered that there had been no decision as yet by senior officials of the company regarding the matter of Canadian production in the future, or if any decision had been made, it had not been expressed as an opinion by the Company at this time.

"Mr. McConnell told us that he had read of the litigation in the United States, involving Zenith with RCA Victor and other prime tube patent holders, and he assumed that the agreements that concluded this litigation would be extended to Canada by the parties

739 involved.

"He was of the opinion, however, that Zenith television receivers and high-fidelity instruments might infringe patents controlled by Canadian Radio Patents Limited, such as:

"Parker—held by C.R.P.L.

"Armstrong, F.M.—Represented by C.R.P.L.

"some Marconi patents—Represented by C.R.P.L.

"some Philips patents—Represented by C.R.P.L.

"Mr. McConnell told us that under Sections 67 and 68 of the Canadian Patent Act, any of the patents or groups of patents controlled by C.R.P.L. that might be infringed by Zenith equipment in Canada could result in such patents being categorized as 'Abused' by the Commissioner of Patents, in the event that action for infringement by patent holders was not initiated
740 within the prescribed period after importation, as spelled out in Section 67 and 68 of the Canadian Patent Act.

"Mr. McConnell then requested that we supply him with a couple of schematic diagrams of Zenith television equipment (two typical chassis), and I offered to do so, inasmuch as these schematic diagrams are readily available through any Zenith dealer. Mr. McConnell explained that the diagrams would be examined by C.R.P.L. principals and that in all probability the Philips engineering division in Canada would accept this assignment for the Canadian Radio Patents Limited. He told us that in the event infringement of patents held by Marconi, Philips, or C.R.P.L. patents administered in Canada under the name of Parker or Armstrong F.M. was indicated by the examination, he would like a meeting to discuss the prob-
741 lem with Zenith representatives, to forestall a serious situation for C.R.P.L. under the Canadian Patent Act.

"The conference closed with the understanding that we would supply the Zenith schematics to Mr. McConnell. These would be examined by the engineering division of one of the C.R.P.L. members, and subsequently, Zenith would be notified of the findings of this examination.

"Yours very truly,

"Lloyd B. Kiely,

"General Manager."

742 By Mr. McConnell:

Q. Now, after receiving that letter, can you tell us whether that had any influence at all upon the policy of the Zenith Radio Corporation with reference to Canada?

A. No, it was, as I indicated before, very surprising to us because we had thought that this dispute was all over, and apparently it wasn't. And this then made it perfectly apparent that we were going to be working under a cloud in Canada, just so long as CRPL was asserting this Pool against us, and presumably as they had in the past against our distributors and dealers.

Until that could be settled in some way, why, we were always going to be operating under some uncertainties up there.

Q. Well, did it have any effect on the amount of money Zenith was willing to invest in the Canadian market to promote it, or to exploit it?

A. Well I think it was an effect in our own thinking about what we were willing to undertake in the form
743 of promotions and advertising. But I think even more important than that, it had a profound effect if it were to go beyond this, which was between CRPL and ourselves, and create the same kind of feeling of uncertainty on the part of our distributors and our dealers.

And of course, following that by a few months, when that ad appeared, why, then this did get it out in the open.

Q. I show you a document which is on the letterhead of a Zenith dealer or distributor up in Nova Scotia, a Mr. N. A. MacCuspie. You referred to him in your examination.

A. Yes, sir

Q. Did you receive this letter through the mails from Mr. MacCuspie on or about the date that it bears?

Mr. Dodds: What Exhibit number is that?

Mr. McConnell: Well, it hasn't got an Exhibit number. I guess we better give it one.

744 Mr. Curtis: Its got an Exhibit number.

By the Witness:

A. Yes, sir. I recall getting this letter.

Mr. McConnell: It has an Exhibit number, No. 1620.

Mr. Dodds: That's not in the file. That's not a trial Exhibit Number.

Mr. McConnell: It is a trial Exhibit number, Defendant's Exhibit No. 1620.

Mr. Diggins: 162D.

Mr. Dodds: 162D.

Mr. McConnell: You are right. It is 1620. That to me means 1620. I don't analyze figures and letters. 1620.

Mr. Diggins: 162D, I think it is.

The Witness: It looks like a D, Mr. McConnell.

The Court: Somebody decide; we need the BUD, but not the 162D.

Mr. McConnell: If there is a consensus on it, we will call it 162D.

By Mr. McConnell:

Q. Now, you received this form Mr. MacCuspie
745 through the mail?

A. Yes, sir.

Q. On the date of the 23rd of July, 1962?

A. I believe there is a stamp showing its receipt in my office on that date.

Q. "July 26, 1962, Joseph S. Wright"—that's your receipt stamp?

A. Right.

Q. And Mr. MacCuspie, who was he again?

A. He was a man who had, over a period of a number of years, tried to distribute our products in, I believe, it's Halifax or Truro, one of the Martime Provinces.

Q. And attached to that letter is a copy of a letter from Canadian Radio Patent Limited under date of May 17, 1962, signed by Mr. McConnell; is that right?

A. Yes, sir. This is the similar kind of letter that our distributors had received in years past from the Pool whenever it came to their attention that they had been marketing any products, Zenith products imported.

746 Q. Now, can you tell us what the purpose was of sending this in to you?

A. Well, Mr. MacCuspie sent it to me to let me know that the Pool was apparently still very active in stopping the importation of products made—

The Court: The date of this is what, Mr. McConnell?

Mr. McConnell: The 23rd of July, 1962. I offer this document in evidence with the enclosure.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked DEFENDANT'S EXHIBIT NO. 162-D.)

Mr. McConnell: I want to read from it.

"Dear Mr. Wright:

"When in Montreal and Toronto in June at the Open House Showing, I was given to understand that either you or Mr. Caplin would be interested in receiving a copy of the letter our competitors, namely, Electrical Distributors Ltd., of this town received
747 from our friends Canadian Radio Patents Ltd., of Toronto relative to them importing sets manufactured in USA by Motorola.

"If you were not the interested party in this information would you kindly hand same on to Mr. Caplin, as I was able to receive a photostatic copy from Electrical Distributors Ltd. of this town, it is quite evident that our friends Canadian Radio Patents

Ltd., are trying to use the same tactics as they did on us a number of years back.

"If you are interested in any further information as to the proceedings now taking place I would be glad to obtain for you the photostatic copies of such correspondence.

"Thank you for past favors."

Then there is a letter to Electrical Distributors Limited, apparently distributors of Motorola products in Canadian Radio Patents, which is—I don't think I will read it at this time. It states the position of the Pool and asks for the
748 stopping of the importation of Motorola products.

Well, I will read this:

"At this point it seems fairly evident that importation of Motorola products incorporating our inventions would hinder the Canadian manufacturer on a commercial scale of similar products. Accordingly, in order to comply with the intent of the Canadian Patent Act, we would not be prepared to license such imported products with the exception of patents of Canadian General Electric Company Limited and Canadian Westinghouse Company Limited. These, we have been instructed to license irrespective of the country of origin of the patented products.

"Accordingly, should importation of Motorola products take place and should these be found to incorporate inventions covered by patents which we are empowered to license other than those of Canadian Westinghouse or CGE, we would be forced to place the matter in
749 the hands of our solicitors with instructions to take whatever action they may deem necessary in order to protect our patents."

By Mr. McConnell:

Q. Was that the sort of action that had been threatened against your distributors in the past?

A. Yes, sir, it had. And I might add in response to that, that a wholesale distributor is generally—and particularly in Canada—a rather small business enterprise. And when someone talks to him about threatening patent litigation in which he is to be the defendant, this is a very effective way of putting him out of business in the art. That has been our experience over the years, at least.

Q. I show you a bulk exhibit here which has been marked HRI against Zenith, PX 179. I ask you to identify this as a bulk exhibit about which Mr. Dodds asked you some questions.

A. Yes, sir.

750 Mr. McConnell: All right, I will offer this bulk exhibit in evidence.

Mr. Dodds: You are supposed to use your copy. This is my copy. This is the only copy that I have.

Mr. McConnell: I will use mine, but I want a ruling by the Court on it. He examined the witness on it and I think that that makes it competent.

Mr. Dodds: No objection.

The Court: All right, it may be received as a bulk exhibit, whatever number it is.

Anything further?

Mr. McConnell: I have no further questions.

Mr. Dodds: I have a couple of questions, your Honor.

The Court: All right.

Recross Examination by Mr. Dodds.

Q. Still referring to this Exhibit 162-D, enclosing a copy of the letter received by Electrical Distributors Limited of Nova Scotia, that concern was not a distributor of Zenith Products, was it?

751 A. No, sir, —or not to my recollection. They apparently were distributors of Motorola products.

Q. I believe you indicated that your decision that the Canadian Patent Act did not bar importation from the U. S., you indicated was based in part upon an opinion by Mr. Ira J. Adams, is that right?

A. Yes, sir.

Q. Have you read Defendant's pretrial brief in this action?

A. Yes, sir.

Q. Is the opinion to which you refer that which is reproduced at the bottom of Page 43 of your brief?

A. Yes, sir.

Q. That is dated 1924, is it not?

A. I believe it is.

Q. Do you know the present Canadian Patent Act was passed in 1935 so that is eleven years later?

A. Yes, sir.

Mr. Dodds: That is all.

The Court: Anything further?

752 Mr. McConnell: Nothing further, your Honor.

The Court: Thank you, Mr. Witness. Monday is the earliest that you have to return.

(Witness excused.)

Mr. McConnell: Mr. Stevenson.

WILLIS STEVENSON, called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Where do you live, Mr. Stevenson?

A. I live in Clarendon Hills, Illinois.

Q. And what is your business or occupation?

A. I am manager of internal auditing at Zenith Radio Corporation.

Q. Are you an accountant?

A. Yes, I am. I am a CPA, a member of the Illinois Society of CPA's and I am a member of the American Institute of Accountants.

Q. How long have you been a CPA?

753 A. Since 1947.

Q. Now, what is your business and what are your duties out at Zenith Radio Corporation?

A. My duties are the management reviews of the operations of the parent company and the subsidiary companies in such a way as to protect the interest of the companies.

754 Q. And do you have under your supervision and control statistical data with reference to the operations of the company as to sales, for instance, what their sales are?

A. I have access to such data, but I do not keep it.

Q. Who keeps it?

A. It is kept in several places, the financial division of the company, the marketing statistical department of the company and several other places.

Q. Have you made any examination of the records of the company to determine the unit volume of its sales in recent years?

Mr. Dodds: Your Honor, I should like to inquire if this testimony goes to the quantum of the damages, and I would object to it as premature.

The Court: I would assume so.

Mr. Dodds: I believe there are several authorities that bear me out on that point. I can cite one, one which is relied upon by the plaintiff in its brief. It was an

755 antitrust case, General Electric Company, in 1949, and I'm quoting from a decision of the Supreme Court in United States versus United States Gypsum Company, and in referring to that case said:

"There is a particular burden thrust upon a trial court in anti-trust cases by the Supreme Court as a result of its decision in United States v. United States Gypsum Company,"

And the citation

"—in the admission and rejection of evidence and declarations of Defendants. The key is the determination that a prima facie case of conspiracy has been established."

Then there are two lower court decisions on the specific question of damages; one is Ball versus Paramount Pictures in Pennsylvania, 1944. It was an action for treble damages and injunctive relief based on the alleged antitrust law violations. The plaintiff was the owner of a motion
756 picture theatre in Pennsylvania and alleged that defendants had conspired to destroy the value and productive possibilities of the theatre. Voluminous interrogatories were filed, including one numbered forty.

In sustaining an objection to this interrogatory the court said:

"As to interrogatory forty calling for gross annual receipts of these defendants at the Penn Theatre in Ambridge, it may have evidential importance, if we find that plaintiff is entitled to recover damages; but until, and if, we so find, we will not require an answer to this interrogatory."

Another case in the Middle District of Pennsylvania was Brosious versus Pepsi Cola Company. It was a suit for damages arising from defendant's alleged violation of the antitrust laws. The plaintiff in that case moved to
757 refer the case to a special master for a hearing and report on the damages sustained by the plaintiff.

In denying the motion the court said:

"This action was brought under the provisions of

15, U. S. C. A. Section 15. An examination of the allegations of the complaint clearly shows that there are no 'exceptional' conditions requiring a reference to a master of the issues relative to liability on the part of either or both defendants. This leaves only the matter of damages as a proper issue for reference to a master. I feel that the orderly way to dispose of this case is to determine first whether or not there is liability on the part of these defendants and, if it is found that they are liable for such damages as the plaintiff may have sustained, then the issue relative to the amount of the damages suffered by the plain-
758 tiff may be submitted to a master if it is then found that there is necessity for such reference."

That is also the uniform practice in patent infringement action where damages are claimed, to defer any evidence on the question of the quantum of damages until and after there is determined to be liability for damages. I submit that the testimony on the quantum of damages is premature at this time and I object to testimony on the issue.

759 The Court: Well, I have in mind that I was first informed that the counter-plaintiff's case was going to take two weeks. Now I am informed that even with proof of damages it is going to take less than four days. Having in mind that both you and Mr. McConnell are difficult people to get in Chicago at the same moment, I don't know what your trial schedule is, but if it is what it has been in the past, I don't know whether I could get you back before fall in case that I found that the question of damages should be heard by the Court. I think I am prepared, even though it is premature, to get this damage question over now in one day, resting on his assurance, so that when you leave town you won't be concerned about having your schedule in Baltimore or San Francisco or Phoenix interrupted to

come back here for a day or two on the damage question; so I am going to permit it at this time in view of the fact that it is not going to take us another two weeks or so to get this testimony in.

760 Mr. McConnell: I think we are going to be through by tomorrow noon.

The Court: I understand that, and that is why I want to get the show on the road.

It is now one minute before four, and the Judges' meeting is going to start in a minute, and as I say, I would rather be here than where I am going to be, but I have no choice.

Mr. McConnell: We will be through by noon tomorrow. We made good time here, thanks to your Honor.

The Court: I don't like things hanging fire either.

We will stand in recess until 10:00 o'clock tomorrow morning.

(Thereupon an adjournment was taken to 10:00 a.m., of the following day, Thursday, February 20, 1964.)

761 • • (Caption—59-C-1847) • •

Before The Hon. Richard B. Austin,
Thursday, February 20, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dobbs,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

762 The Clerk: Case on trial.

The Court: Get your witness back, Mr. McConnell. We certainly made up for no motions yesterday, didn't we?

Mr. McConnell: Yes, we did. It's the law of averages, I guess.

Before continuing with the examination, your Honor, I want to offer for filing in the case a stipulation which Mr. Dodds and I have entered into with reference to documentary evidence, and I want to express my appreciation to Mr. Dodds for his cooperation, which I think has saved probably ten days to two weeks of the time of this court in not having to have underlying evidence.

The Court: I might say that it also saves your client and Mr. Dodds' client an awful lot of money, too.

Mr. McConnell: Yes.

The Court: Being aware of your rates and per diem.

Mr. McConnell: I hope they are not too far out of line.

763 The Court: Well, apparently there has been an official ruling on it.

WILLIS STEVENSON, called as a witness on behalf of the Defendant herein, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. McConnell (Continued).

Q. Mr. Stevenson, we got your qualifications into the record the other day.

Now, have you made some research and some tabulations as to the number of units of the products manufactured by the Zenith Radio Corporation which that company has sold during the four years preceding the filing of the counterclaim in this case.

A. Yes.

Q. And from what records did you procure that data?

A. I obtained that information from statistical records prepared within the company.

Q. Well, did you go to the actual records of the com-
764 pany kept in the due course of business at Zenith?

A. I went to reports prepared from those records.

Q. Were those reports prepared under your supervision?

A. No, sir, they were prepared under the supervision of the manager of the Marketing Statistical Department.

Q. Were they prepared in the due course of business of the company?

A. They were.

Q. Now, will you tell us what the nature of those computations are?

A. The number of units that were compiled were prepared from shipping reports prepared daily by our IBM department.

The Court: Is all assembly done here in Chicago on the Zenith products?

The Witness: Not all of it, but a large majority of it, sir.

The Court: You are talking about, then, shipping reports from all assembling stations?

The Witness: Yes, sir.

765 The Court: All right.

By Mr. McConnell:

Q. From all branches of the Zenith Manufacturing Company, is that it?

A. Yes.

Q. And that was prepared by your IBM department?

A. Yes.

Q. Now, you refer to units. Will you tell the Court what units you are talking about? In other words, is that a mix of units, or how do you make up the units?

A. The units are segregated into product lines, television, radio, hi-fi, stereo and color television. The units that I have excepted from the record deal only with black and white television and radios.

Q. You have not included any color television?

A. No.

766 By Mr. McConnell:

Q. Now, how did you tabulate that? Did you tabulate it—or if you did tabulate it, did you tabulate it according to years?

A. I tabulated it by years for periods within the four-year period to which you have referred.

There are five periods by this method; June 1 to December 31, 1959; the year 1960; the year '61; '62; and the period January 1 to May 31, 1963.

Q. That is the date of the filing of the counter-claim in the instant case, that last date?

A. Yes.

Q. All right. Now, have you got a tabulation of those figures?

A. Yes, sir.

Q. Are your work sheets here anywhere?

A. Yes.

Q. How does that appear in your work sheets? Is this tabulation made by you personally?

A. This tabulation is made by me personally.

767 Q. All right. And you have it here in court?

A. Yes.

Q. Can you show me which sheet you are referring to?

A. I'm using the Zenith column on that sheet.

Mr. McConnell: Can you give me a number for this.

By Mr. McConnell:

Q. I show you a document which is marked for identification Defendant's Exhibit 218, and ask you whether or not you can identify this as being personally prepared by you from the sources about which you have just testified?

A. Yes, sir, it is.

Q. Is it an accurate computation?

A. Yes, sir.

Q. Now, after preparing those figures of those units, did you obtain from any source the units sold in the United States during the same period for those same products by the industry as a whole?

768 A. Yes, I did.

Q. And from what source did you get those figures?

A. I had obtained those units from a report prepared by our statistical department. This report is prepared by that department from statistics received from the Electronic Industries Association, and used internally within the company to compare with the units that Zenith has sold.

Q. Will you tell us what that industry association is, as far as you know?

A. Well, for this purpose, the industry association obtains from the manufacturers in the United States on a confidential basis the number of units of sets which they

have shipped both on a weekly and a monthly basis, and these are totalled by them and distributed to the manufacturers as a total in order to advise them of the total industry production.

Q. And you have received that over regular periods of time from this association?

A. Yes.

Q. And on that, you base your business calculations
769 and so forth out there at Zenith, in the regular course of your business?

A. Yes.

Q. All right. Now, from that data, did you compute or total the industry sales on those products during the four years that are involved—the four years prior to the filing of the counterclaim?

A. I did.

Q. And have you such a tabulation from your work sheets?

A. Yes, sir, I have.

Q. Will you produce it, please?

A. This is on the same sheet which has been marked by you before.

Q. Which you have already identified as being accurately compiled by you personally?

A. Yes.

770 Mr. Dodds: May I see a copy of what the witness is talking about. Do you have a copy?

Mr. McConnell: Have we got a copy? You can use the original.

The Witness: These are worksheets and one of a kind. We would like the privilege of reproducing these.

Mr. McConnell: We will have photostatic copies made for the record, Xerox copies.

By Mr. McConnell:

Q. Now, with those two figures, what the industry sold or produced, rather, during this period of time, and what Zenith produced in this period of time, did you make some percentage calculation as between the two items?

A. Yes, I did.

Q. And what determination did you make as between those two items?

A. I determined the percentage of units shipped by Zenith to the units shipped by the industry.

Q. And are those percentages shown on your work-
771 sheet there?

A. They are.

Q. And did you calculate them correctly and accurately?

A. Yes.

Q. Now, did you make any computations of what units were sold in Canada during that same period of time, the four years prior to this counterclaim?

A. Yes, I did.

The Court: That is, industry units, the industry as a whole unit?

Mr. McConnell: You are right, your Honor.

The Witness: Yes, sir.

By Mr. McConnell:

Q. And from what source did you get that information?

A. I obtained that information from Government statistical reports. In the case of Canada, it was the Canadian Statistical Review, Historical Summary, 1963 Edition by the Dominion Bureau of Statistics, and also from the
Canadian Statistical Review of October 1963, prepared
772 by the same organization.

Q. Can you identify that statistical data as contained in the defendant's bulk exhibit 216, which I show you now?

A. Well, I don't see here the Canadian Statistical Review Historical Summary, 1963 Edition.

Q. Have you got that in your papers there?

A. I don't have it here, but I have it in the courtroom.

Q. Can you go to whatever you have back here and get it for us, please?

Will you describe what you have produced now?

A. From these statistical papers, reports, I have extracted the number of units of radio and television produced by the Canadian producers and sold within Canada.

Q. Well, now, what I want is to find out what the source of this document is—Statistical Reviews, Canadian Statistical Reviews. Where did you get it?

A. I obtained this from our legal counsel.

Q. You don't know where you got it?

773 A. No.

Q. What does it purport to be?

A. It purports to be a publication prepared by Dominion Bureau of Statistics, Ottawa, Canada.

Q. That is a Government agency?

A. A Government agency.

Mr. McConnell: We have a stipulation on this, do we not, as to being a public record?

Mr. Dodds: It is stipulated as to its authenticity.

The Court: All right.

By Mr. McConnell:

Q. And from this document, I take it you obtained certain figures?

A. Yes.

Q. Which you have tabulated?

A. Yes.

Q. Now, will you tell us what figures you obtained from this document, and I guess we better have a number on it so we know what we are talking about.

The document I am referring to, Mr. Stevenson, is
774 Defendant's Exhibit 219.

A. Yes.

Q. Now, what figures did you obtain from that document?

775 A. In Table 50 of this document is a table showing radio and television sets, producers' sales thereof, and within that bracket, radio receivers. Under radio receivers are five columns of which home sets, portables, auto, combinations and total are a part. This is combined in monthly averages from 1930 to 1962.

Mr. Dodds: Your Honor, that is not one of the documents within the stipulation. I have never seen that document. The one furnished me is the one—1955 supplement.

Mr. Curtis: I thought you had everything. We will check and see.

Mr. Dodds: I have here—it starts, the first one, 1955 supplement.

Mr. Curtis: I think it will show that the statistics are the same in those that are marked.

Mr. Dodds: At least I certainly want to see what this is about, because this is 1952, you say?

The Court: No. This goes back to '32.

Mr. Dodds: What is the date of the exhibit?

776 The Witness: The date is the 1963 Edition, Historical Summary.

Mr. McConnell: It covers what period of time?

The Witness: This table covers from 1930 through 1962.

Mr. Curtis: The statistics are the same, Mr. Dodds.

Mr. Dodds: Pardon?

The Court: What years do you have statistics for, Mr. Dodds?

Mr. Dodds: The one they supplied me here, the last one—it's true, it may be duplicate information—is a 1963 supplement. But it isn't that document, and it may be that the things are the same. I just don't know.

The Court: I mean, are these broken down by years?

The Witness: Yes, sir.

The Court: I mean, let's see if the years—the only ones we are concerned with is '59 to '62. Let's see if those
777 three pages are the same. Let's compare them right now. Let's see whether or not—

Mr. McConnell: All right.

The Court: If that will terminate any problem.

Mr. Dodds: They probably are, your Honor, but I just haven't seen them.

The Court: I know. I see you are on the alert for your client, and I congratulate you.

The Witness: I didn't go far enough in these. This is the one that we are referring to.

Mr. Dodds: That I don't have. I have here—maybe you don't need to take this down, unless you want it down.

The Court: I don't want it down. This is off the record, Mr. Court Reporter.

(There was a discussion off the record, after which the following further proceedings were had herein:)

The Court: Back on the record, Mr. Court Reporter.

By Mr. McConnell:

778 Q. Now, we are trying to get from you what are those figures you used in your tabulations.

A. For radio, as the market in Canada, we used the producers' sales of radio receivers, home sets, and portables. We have excluded auto and combination.

Q. Auto radios, you mean?

A. Yes.

Q. Combinations, what are they?

A. Combinations are radio-phono combinations.

Q. All right. Now, did you tabulate that somewhere?

A. Yes. These are shown in monthly averages. And for the years in which I used a part of a year, I multiplied

by the number of months involved. And for those four years I multiplied by 12 and I tabulated these figures on a schedule.

Q. And have you got such a schedule here?

A. I do.

Q. Will you produce it, please.

Mr. McConnell: Let's get a number on this.

Mr. Dodds: Judge, I want to make sure I'm looking
779 at the same thing. Is that what you are referring to?

The Witness: Yes. That is it.

780 Q. Mr. Stevenson, I show you a document which is marked here for identification as Defendant's Exhibit 220, and ask you to tell us whether or not you prepared it and whether the tabulations that you have made from the sources you have indicated are accurate?

A. I believe they are, sir.

Q. And where do they appear on this schedule, in some column?

A. It appears in the column shown on this schedule as "Market Units."

Q. All right.

Now, that, then, I take it, shows the number of units produced by the industry in the respective years of the four years preceding this counter-claim, is that correct?

A. Yes, sir.

The Court: And this is broken down between radio and televisions?

The Witness: Yes, sir.

The Court: All right.

By Mr. McConnell:

781 Q. All right, did you make a computation of any kind from the books and records of the Zenith Radio Corporation of the number of units of products, the products that you have mentioned that you did sell in Canada that period of time?

A. Yes, I did.

Q. And from what source did you make that computation?

A. I extracted this information from the report—monthly reports prepared by our marketing statistical department. This department compiles the sales made by all of our distributors in Canada into one total.

Q. And did you make a tabulation of those sales?

A. I did.

Q. In Canada?

A. By units.

Q. And does appear on this schedule 220?

A. Yes, it does.

Q. And is it correctly transcribed from the sources that you mentioned by you personally?

A. Yes.

782 Q. And is it accurate?

A. Yes.

Q. Now, did you make any determination as to profits per unit obtained by Zenith Radio?

A. I did.

Q. And from what source did you make such a computation?

A. Basically, from the financial documents of the company.

Q. Now, will you tell us what documents you used in making such a computation?

A. I used reports prepared from the records of the company, prepared within the financial division, to show profits by production lines and by other divisions within the production lines.

Q. All right, now were those records kept in the regular course of business, can you tell us, of the Zenith Radio Company?

A. They were.

Q. And are they accurate? Do you know?

A. I believe they are.

Q. Well, you have to do with overseeing the accuracy of the accounts, as I understand it, at Zenith?

783 A. Yes.

Q. And can you tell us whether those records are accurate?

A. They are.

Q. All right.

Now, how did you compute the profit per unit, what formula did you use in computing it?

A. The determination of the profit per unit is expressed for this purpose as a percentage of the sales dollar. We obtain from the records reports prepared both for television and for radio of the percentage of profit made in the normal course of business on sales made to Canada within these specific five periods.

784 Q. All right.

Now, what I am getting at is, how do you determine the profit? You must take cost figures and deduct that in some way from what you receive. Is that the way you do it?

A. Yes, the profits are determined by relating to every unit sold the costs which apply to that unit.

Q. All right.

Now, did you determine or obtain a profit figure per unit either in percentage or in dollars on the goods sold in Canada?

A. I did.

Q. And what is that figure?

A. It varies from period to period.

Q. All right, let me ask you this; did you calculate it or compute it from period to period?

A. I did.

Q. And have you any work sheets there which shows that computation?

A. Yes, sir, I have a work sheet which shows the profit we made in the normal course of business on these sets sold to Canada.

785 Q. And what figure did you use as a figure in this schedule 220 that you have produced here?

A. These figures were not used directly, they are adjusted to eliminate from the cost which had been used those expenses which would not be duplicated if there were additional volume added to the present volume of production.

Q. You are speaking now of fixed overhead and things of that kind?

A. Yes.

Q. And what are the items? Can you tell us what they are?

A. The items which were eliminated are, generally, in large part, our factory overhead items of a fixed nature; they are Zenith profit sharing retirement plan provision, which is based on prouts of an operation rather than on salaries. They eliminate the administrative overhead expenses which would not be increased by an additional volume of business, legal expense, engineering expense and several other small items.

786 Q. All right.

Now, will you tell the court why you have eliminated those in making this computation, from an accounting standpoint?

A. I have eliminated these because these items would not increase with an additional volume of business at the manufacturing level.

Q. In other words, they remain the same no matter how much business you had, is that it?

A. Yes, within reasonable limits they would.

Q. Well, within the limits of the operation at Zenith, would they?

A. Within the limits that we are talking about here, they would remain the same.

Q. All right.

Now, does this profit computation appear anywhere in your schedule 220?

A. Yes, it does.

Q. And where does it appear?

A. It appears under the column "Profit applying to additional volume," and it is expressed as a per cent.

787 Q. Per cent of what?

A. Per cent of sales dollars.

Q. And does that—and is that translated into a dollar figure?

A. That translates, when applied to sales dollars, into a lost profit dollar.

Q. And then how did you use that in making your computation of lost profits?

A. I did apply these percentages as determined to the dollar volume of lost sales in the Canadian market to arrive at the lost profit on these sales.

Q. All right.

Now, will you tell the court how you computed or how you reached the conclusion of the lost sales, the item "Lost Sales"?

A. Yes, sir.

In the Canadian market we have started with a base of the market, which I have previously described, for each of the five periods. We have applied the Zenith share of the domestic market expressed as a percentage for each of these five periods to arrive at a Zenith share of the Canadian market, expressed in units.

788 The Court: Assuming their share would be what, the same as it is in America or what?

The Witness: The same as it is in the United States.

The Court: All right.

By the Witness:

A. (Continuing.) From that number of units I have deducted the number of units we actually sold in the Canadian market in each of these five periods to arrive at the lost sales in the market, expressed in units. To those units I have applied a Zenith average factory selling price to Canada of sets, within these five periods, actual experience of our selling price—

By Mr. McConnell:

Q. Yes.

A. —to arrive at the lost sales in that market expressed in U. S. dollars at the factory selling price level.

Q. All right.

Now, as to determining the lost profit, what did you do?

A. To the figure of lost sales in the market, I have applied the percentages of profit applying to additional
789 volume of business and arrived at the lost profit on the lost sales, also expressed in U. S. dollars.

Q. And you have done that for the four periods that we have talked about?

A. Yes, sir.

Q. Is it four periods you have got?

A. There is five periods, four years.

Q. One of them is a portion of two years, I take it.

A. Two of them are a portion of a year, yes.

Q. That is what I meant to say.

A. Yes.

Q. Now, turning to the English market, what computation did you make, if any, as to lost sales in England, and tell us how you made the computation.

A. The formula for determining lost sales was followed in England as it was in Canada, with the exception that in

determining Zenith's share of the market in units, instead of using the Zenith share of the domestic market, I have used 25 per cent of that percentage, or one quarter, and in other respects the computation is similar.

790 Q. Well, it is identical, isn't it, in formula, at least?

A. It is identical except that the number of units varies.

Q. Now, where did you get the industry figures in England?

A. The industry figures in England were obtained from two sources. Annual Abstract of Statistics, 1963, by the Central Statistical Office, and the Monthly Digest of Statistics, October 1963, by the Central Statistical Office.

Q. Did you draw off the figures from those reports?

A. I did.

Q. And can you tell us whether or not they are accurately transcribed or transposed from the one to the other?

A. They are. It is not a direct abstraction. In the process of determining the market for radios we have estimated the number of auto radios included in their sales total and deducted that to reduce what otherwise was shown as a Canadian Radio sales. We have reduced it to just portables and home sets.

791 Q. But with that qualification you have accurately drawn off the figures?

A. Yes, sir.

Q. From the industry reports?

A. Yes, sir.

Mr. Dodds: May I check to see again if we are looking at the same document?

The Witness: Yes, sir.

Mr. Dodds: You are talking about Great Britain?

The Witness: This is October 1963, Table 78.

Mr. Dodds: Just a minute, I don't think I—I am sorry, it is out of place. Monthly digest, October 1963, is that—

The Witness: Yes, October 1963.

Mr. Dodds: And Annual Abstracts, 1963.

The Witness: Yes, sir.

Mr. Dodds: Fine.

By Mr. McConnell:

Q. Now, those figures, I take it, appear on your Exhibit 220?

A. Yes, sir.

Q. And from them you have made similar calcu-
792 lations as to what you—applying this formula, at least, what the figures would show would be lost sales?

A. Yes, sir.

Q. And have you also made a computation of lost profits on those sales?

A. Yes, sir.

Q. And what have you used in making that calculation?

A. I have used the same percentages which were used for the Canadian computation.

Q. Have you made any computation of what actual sales you have had in the British market or English market?

A. These have been complied by our export division and have been given to me, and I have them as a part of this computation.

Q. And what use have you made in your computation of those figures?

A. Those units have been deducted from the Zenith share of the United Kingdom market to obtain the lost sales in the market for Zenith expressed in units.

Q. So that you have given credit in your computa-
793 tion to the sales that were actually made?

A. Yes, sir.

Q. All right.

Now, will you turn to Australia. What computations have you made with reference to Australia?

A. The formula followed with respect to Australia is similar. The formula is the same as for the other countries with the exception that the percentage of the Australian market which was applied to obtain Zenith's share of the market has been reduced to one-tenth of Zenith's share of the domestic market.

Q. I take it that that is an arbitrary formula that you are given in making your computation?

A. It is.

Q. Aside from that, have you made the computations in the same manner?

A. Yes, sir.

Q. Now, where did you get your Government statistics from Australia?

A. The Government statistics were contained in Government publications, monthly bulletin of production
794 statistics for October 1963—October 1960, March '63, September '63, issued by the Commonwealth Bureau of Census and Statistics.

Q. And you accurately transcribed those figures, did you?

A. Yes, sir, these figures in this bulletin are production figures in the market rather than sales figures of the manufacturers, but this was all that was available.

Q. Now, can you tell us from looking at your schedule and from your worksheets there and on the basis of the computation and the formula which you have used, what figures do you come up with for the different years as a figure for lost profits in the Canadian market?

A. Well, in the Canadian market for the period June 1 to December 31, 1959, in television the lost profit was $708,028; in radio, $138,048.

Q. That is in the whole period of the four years?

A. That is in a seven-month period of 1959.

Q. All right, what is next?

A. In 1960, with respect to television, the lost profit
795 was $1,116,597, and for radio $145,371.

Q. What was your next period?

A. In 1962, for television, it was $1,300—

The Court: You skipped 1961.

By the Witness:

A. 1961, sir, the lost profit in television was $1,348,867; in radio, $68,241.

Mr. Dodds: That is sixty-eight or fifty-eight?

The Witness: Sixty-eight, sir.

By the Witness:

A. (Continuing.) In 1962, the lost profit on television was $1,883,774, and on radio $75,622; for 1963, for the first five months, January through May, the lost profit in television was $769,630, and in radio, $43,213.

Q. All right, now, will you turn to Great Britain, or England, and tell us what your lost profit figures are in those same periods of time.

A. Yes, sir.

In television in 1959, from June 1 to December 31, the lost profits were $1,517,357 for television, and for radio, $127,203.

For the year 1960, for television, $1,921,439.

796 Mr. Dodds: I am sorry, what figure?

The Witness: $1,921,439.

By the Witness:

A. (Continuing.) And for radio, $212,851.

In 1961, for television, $1,977,694, and for radio, $313,921.

For 1962, $1,806,007, and for radio, $334,203.

In 1963, for the five-month period January through May, for television, $857,362, and for radio $180,889.

797 Q. All right, now, will you turn to Australia and give us your computation of lost profits in that market for the four years involved here?

A. Yes, sir.

In Australia, for television, in 1959, for the seven months June 1 through December, the lost profits are $89,875, for radio, $10,004.

For 1960, $156,430 for television, $15,846 for radio.

For 1961, $157,177 for television and $15,138 for radio.

For 1962, for television, $150,106, for radio, $16,238.

For 1963, for the five month period of January through May, for television, $72,198, and for radio, $9,543.

Mr. McConnell: You may cross-examine.

798 Mr. Dodds: Your Honor, this is quite a problem.

We haven't been supplied with copies of any of these tabulations or figures. I would like a moderate amount of time to look them over.

The Court: You let the Marshal know when you have had a sufficient time to look them over. We will take a recess subject to your looking them over.

(A short recess was taken, after which the following further proceedings were had herein:)

The Court: You may proceed, Mr. Dodds.

Mr. Dodds: Your Honor, I have a few preliminary questions. However, with respect to these cost figures, I think your Honor is aware that, ordinarily, proof of damages in this stage of an action is not customary.

The Court: I understand.

Mr. Dodds: These are rather voluminous figures. We should like two things: one, copies of these work papers on which they are based; and two, an opportunity

799 to review them with an accountant, which I am not, to see the meaning of these terms, and have Mr. Stevenson available for examination after that review has taken place.

The Court: All right.

Cross-Examination by Mr. Dodds.

Q. A few preliminary questions, Mr. Stevenson. I believe you indicated that you used the Electronic Industries Association—properly called EIA, which I will use—figures for domestic production of radio and television receivers; is that correct?

A. Domestic shipments, factory shipments of television and radio receivers; yes, sir.

Q. Do you know what companies do and do not report their statistics to EIA?

A. No, sir, I do not.

Q. Do you know whether all of the U. S. manufacturers report their statistics to EIA?

A. No sir, I do not.

800 Q. And to the extent that industry figures are not included in those reported by EIA, then, the Zenith percentage of the industry figures is correspondingly enlarged; isn't that correct? In other words, if two major manufacturers don't report to EIA, then the Zenith figures would represent a relatively larger percentage?

A. Yes, sir, they would be in error.

Q. Now, in arriving at what you assert to be Zenith's share of the market in Canada, the United Kingdom, and Australia, what basis did you use for arriving at that claimed share?

A. The claimed share for Canada was Zenith's domestic percentage applied to the producers' sales of sets in Canada less those sets which we actually sold in Canada.

Q. Well, if you used the same percentage of their domestic share of the market based on the EIA figures; is that correct?

A. Yes, sir.

Q. Had you used that same percentage in the United Kingdom?

801 A. No, sir.

Q. What percentage did you use there?

A. I used one-fourth of Zenith's domestic percentage.

Q. And what percentage, what share did you use for Australia?

A. For Australia, I used ten percent of Zenith's domestic percentage.

802 And in each of those instances, the percentages were based on the percentage of Zenith's U. S. share of the market based on the EIA figures; is that correct?

A. Yes, sir.

Mr. Dodds: I believe that is all the cross-examination, subject to an examination on the figures when I have had an opportunity to review them.

And I believe—I think maybe it is a little premature now, but after an analysis and further questioning on the figures, I propose to move to strike Mr. Stevenson's testimony on several grounds.

I would like to request copies of these exhibits such as this which we do not have copies of, as well as copies of these cost sheets of Mr. Stevenson.

Now, if we are to continue on Monday, I would certainly need these some time tomorrow or late tomorrow morning at the latest, to give me some opportunity to review them with an accountant.

803 The Court: These can be Xeroxed, can't they?

Mr. Dodds: It can be done very quickly.

Mr. McConnell: We will get them, your Honor. We can do that.

The Court: Mr. Witness, how did you pick the 25 per cent figure for Great Britain? What was the basis of your arbitrary selection of that figure?

The Witness: Your Honor, I didn't make the selection of the percentage. It was done by others in the organization.

The Court: I mean, somebody suggested to you that you use in regard to Great Britain 25 per cent?

The Witness: Yes, sir.

The Court: Someone suggested to you that you use the figure 10 per cent for Australia?

The Witness: Yes, sir.

The Court: Do you know the basis for that selection?

The Witness: No, sir.

The Court: All right. I have no further questions.

804 Mr. Dodds: Your Honor, I think, as I recall, I'm sure that Mr. Wright testified yesterday that they had made an estimate, admittedly an estimate of their share of business in England and Australia on the basis of the difficulty of doing business in those countries, for whatever that testimony may be worth.

The Court: But I was wondering if this witness had done something himself in regard to this guesstimate.

Mr. Dodds: Yes.

By Mr. Dodds:

Q. Did you, Mr. Stevenson, base these estimates on information given to you by Mr. Wright?

A. The percentages to use were given to me by Mr. Kaplan.

Q. What is Mr. Kaplan's position?

A. Mr. Kaplan is executive vice president and treasurer of Zenith Radio Corporation.

The Court: All right.

Mr. McConnell: Our next witness.

The Court: All right.

(Witness excused.)

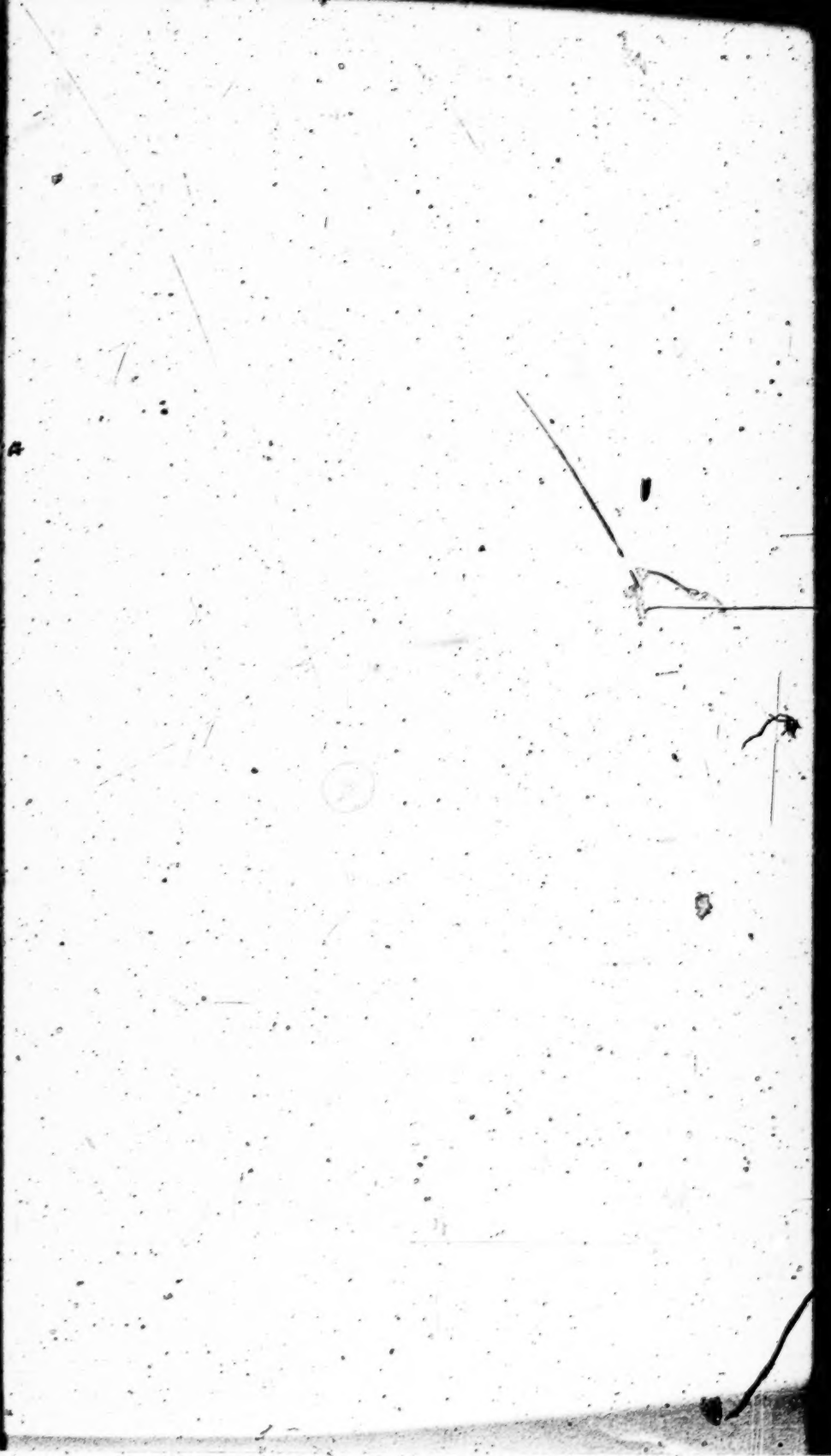
805 Mr. McConnell: Mr. Kaplan. Let me ask, do you want this witness held at your further call; is that it?

Mr. Dodds: Yes. I would like the witness—

Mr. McConnell: You want this witness held for your further call.

Mr. Dodds: Yes. When I get the copies of the sheets.

The Court: All right.



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SAMUEL KAPLAN, a witness called by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, Mr. Kaplan?

A. Samuel Kaplan.

Q. Where do you live, Mr. Kaplan?

A. Oak Park, Illinois.

Q. Have you got an address there?

806 A. 1226 North Fair Oaks Avenue.

Q. How long have you been associated with the Zenith Radio Company?

A. Since 1923.

807 Q. And will you tell us the various positions you have had with that company, from the time you came there up to now. Give us approximately the period of time in which you occupied the various positions, if you can.

A. Well, I started in 1923 in the mail room as a mail clerk and office boy. And I progressed through various clerical jobs in the bookkeeping and accounting department.

In 1934, I was made assistant treasurer and assistant secretary of the company. In 1935, I became credit manager.

In 1942, I believe, I became vice-president, and controller in 1948, and treasurer in 1949. And I became a director in 1958, and executive vice-president and treasurer in 1959.

Q. Now, at the present time, are you the chief financial officer of the Zenith Radio Corporation?

A. I am.

Q. And are all of its accounting procedures and its

bookkeeping records, financial matters, under your general supervision and control?

A. They are.

808 Q. You have been in the courtroom while Mr. Stevenson has been testifying, have you not?

A. Yes.

Q. And you have heard his references to the underlying books and records which he utilized in making his computations. Can you tell us whether or not those books are kept in the regular course of business, and whether or not they are accurately kept?

Mr. Dodds: Your Honor, I stipulate that they are kept in the regular course of business and accurate. No question about it.

The Court: All right. That solves that.

By Mr. McConnell:

Q. Have you had anything to do, over the course of the years, with this problem of trying to obtain licenses to import Zenith radios and television sets into Canada?

A. Yes. During—oh, for the last twenty, thirty years, we have had an interest in selling our merchandise in Canada, because we have had a demand for our merchandise in Canada. And I have been a part of any
809 discussions and conferences.

In 1953, I believe it was, I made a trip to Canada.

Q. All right.

Mr. Dodds: Your Honor, I object to this line of testimony. It is duplicative of what Mr. Wright testified, in addition to this bulk exhibit of some seventy-five letters of correspondence indicating their problems.

I am perfectly willing to stipulate that Zenith has had problems in exporting their radio and television receivers to Canada.

The Court: Maybe he has something in addition to that. I don't know what his testimony is going to be, and I can't guess.

Mr. McConnell: I'm not going to duplicate the testimony. I may overlap a little, but it will be very, very slight.

The Court: I mean, it is not your intention to duplicate what is already in evidence?

Mr. McConnell: No.

810 The Court: This is going to be supplementary?

Mr. McConnell: That's right.

The Court: All right. The objection is overruled, if that is the case.

By Mr. McConnell:

Q. Did you make any investigations or surveys up in Canada to determine whether or not Zenith Radio could manufacture their products in Canada?

A. Yes. We have done this in many ways. Over a period of years, we have made economic studies of the advantages or financial disadvantages of manufacturing in Canada as opposed to manufacturing in our main plants in Chicago. And while I was in Canada, I visited the plants of several competitors to determine to the extent that you could, either visually or by discussions with the managers, the costs and their efficiencies.

811 Q. Well, did you reach some conclusion as to whether or not Zenith should embark on the manufacture of its product in Canada?

A. Yes. In every instance, our conclusion was that it was more advantageous to manufacture in Chicago and export into Canada.

Q. Now, can you tell us on what that judgment was based, what considerations?

A. Well, considering the cost of components, the cost

of labor and the relative efficiencies, and the overheads applicable, and compared to a limited production as opposed to the rather large production that we have at Chicago. In each case, the economics was in favor of manufacturing in Chicago and exporting.

Q. Now, you heard Mr. Stevenson's testimony this morning that there were certain fixed items of cost which would not be duplicated in the type of product which was to be shipped, or contemplated could be shipped to Canada. Did you hear that testimony?

A. Yes, I did.

Q. Will you explain to the Court why that is so?

812 A. Well, in addition to the items that Mr. Stevenson specifically named, you have such items, for instance, as depreciation and rentals and real estate taxes that are measured more on a time basis than a per-unit basis. And to the extent that you don't have to add any facilities to accomplish this production, the additional production amounts to a dilution of these costs over a larger amount; or another way of accounting for it would be not to add these costs to the additional increment of production.

Q. Are you familiar—

The Court: That is, your real estate taxes would be the same regardless of how many units you make?

The Witness: That's right. And your depreciation on your plant and equipment, your Honor.

The Court: Well, it may well be that by making more units, it might increase your depreciation. It might shake the building a little more. All right.

By Mr. McConnell:

Q. All right, your fixed salaries and all that would

813 be the same, too, would they not?

A. That's right. They would be in the same cate-

gory. They vary by time rather than by unit of production.

Q. Now, are you familiar with this EIA organization?

A. Yes.

Q. What is that organization?

A. Well, it is an organization of electronic manufacturers of which consumer products is one division. Zenith is not presently a member of the EIA. However, in order to keep their statistics accurate and valid, they have asked us to continue to report our production. And we have done so because it is vital to us to get back the total industry figures so we can compute our marketing position.

As far as I know, their figures include either actual reports from all major manufacturers or an estimate of their production.

Q. So that all production, domestic production, is included in those figures?

A. We assume that that is so.

Q. Well, you base your business calculations on 814 that in running your business at Zenith?

A. That is right.

Mr. McConnell: Mr. Dodds, have you got Exhibit 220, the one that we examined the witness on this morning? It is the yellow—

Mr. Dodds: I gave that back to Mr. Curtis. I gave the whole group back to Mr. Curtis for duplication.

Mr. McConnell: Here it is.

By Mr. McConnell:

Q. Now, I take it that you knew that Mr. Stevenson was making some calculations with reference to the Canadian and the United Kingdom and the Australian market?

A. Yes, I did.

Q. What was the basis—or did you give to him the percentages to be used in making those calculations?

A. Yes, I did.

815 Q. Now, on what did you base your figure for Canada?

A. Well, our figure for Canada was—in our opinion, we thought that we could accomplish in Canada the same percentage of industry that we were able to accomplish in the United States.

Now, this took into consideration the similarities between the countries, the effect of our advertising which overlaps and spills back and forth between the countries, and the nature of our competition.

Q. And you were assuming, of course, that you were in a free market, free of the restrictions which we have had evidence of in this case?

A. That is right. That was the basis on which it was arrived at.

The Court: Do the Canadian broadcasting stations use the same signal as the American—

The Witness: The same standards, your Honor.

The Court: Different than the British signal?

816 The Witness: Yes, sir. They are the same as the United States.

The Court: All right.

By Mr. McConnell:

Q. Now, as far as the United Kingdom was concerned, what was the basis of taking twenty-five per cent of the market?

A. Well, I would have to admit that the twenty-five per cent was to some extent arbitrary. I mean, what we are being asked to do here is to determine if a horse that died yesterday could win the Kentucky Derby. But this decision, this opinion was arrived at by taking into con-

sideration the same factors. And in this case, we don't have the similarity in the population. We don't have the same benefits of the spill over of advertising, and the country is three thousand miles away.

It was obvious that it would be difficult to accomplish the same percentage there that we could in the United States or in Canada so we had to make an arbitrary assumption that it would be somewhat less. And in our
817 opinion, the figure of twenty-five per cent of our domestic shares seemed very conservative.

Q. Well, let me ask you this. Is that opinion based upon your long experience with the Zenith Radio in this particular field?

A. Yes, it is.

The Court: I assume you took into consideration the tariff factor and the transportation factor?

The Witness: Yes, yes, I did, your Honor.

The Court: All right.

By Mr. McConnell:

Q. What is the tariff, by the way; do you know?

A. The tariff, I understand, is twenty per cent.

Q. And that is true in Canada too, is it not?

A. That's right

Q. And you took that into consideration in your computation?

A. That's right.

Q. Or your estimate, or your opinion as to the
818 part of the market you would have obtained in Canada?

A. That's correct.

Q. All right. Now, we had the figure of ten per cent of the Australian market.

A. No, sir. It is ten per cent of the twenty per cent that we do domestically. In other words, it is two per cent of the Australian market that we are talking about.

Q. I see. In other words, in your opinion, three of the restrictions of these pools, you think that you could obtain two per cent of that market with your products?

A. I consider that a conservative estimate.

Q. And you gave that figure to your accountant, Mr. Stevenson?

A. That's correct.

Q. To make the computations?

A. That's correct.

Q. I take it you took into consideration, in making that estimate, the tariff, the nature of the competition, and all relevant factors which you would know you would
819 meet in this kind of a market; is that correct?

A. That's correct.

The Court: Would a different picture tube be necessary in England and Australia than you use here or in Canada?

The Witness: No. Well, in Australia, I understand that the polarity of the picture tube has to be changed because they are in the other hemisphere. But it is a tube that we make here and can ship there. We do ship such type of tubes to South America.

In England and Canada, they would be identical.

By Mr. McConnell:

Q. What do you mean by the polarity? I would just like to know myself.

A. Well, you are asking me to explain something—I'm no technician. But in a cathode ray tube, and particularly in a color tube, you have to make adjustments for the magnetic effect of the earth. And in the northern hemisphere, it adjusts one way, and in the southern hem-
820 isphere it adjusts another way. This is a minor thing that can easily be done in the production of tubes.

821 Q. Well, let me ask you this, is there anything, to your knowledge, in Great Britain or England, which would prevent you from making television or radios which

could utilize the broadcast of the British Broadcasting Company?

A. Nothing at all, nothing at all.

Q. You could put that on a regular assembly line here, could you?

A. There are no profound problems that we either don't handle or are not capable of handling.

Q. Well, let me ask you this, haven't you actually made sets at Zenith that can be used in the British market?

A. Yes, we have.

Q. I mean television and radios.

A. That is right.

Q. How about your shipping problem, what does that amount to in the way of cost?

A. Well, of course, this varies by product. It could be as low as 3 per cent and as high as—or some products to Australia, as much as 6 per cent of the advalorem.

Q. Do you have some product such as transoceanic 822 radios which are in demand practically no matter what the price is?

A. Yes. Giving a reasonable definition to what the price is—

Q. Well, what is the situation with respect to transoceanic radios?

A. Well, a transoceanic is a type of a specialized, exclusive Zenith product that has got nine wave bands. Many companies have tried to enter this field, have tried to copy it, and no one has been able to do it with the success that we have enjoyed. We have made, since inception, over a million, or approximately a million of these units, and for people in a foreign country that want to listen all over the world, there just isn't any commercial competition, and there is a great demand for this product from all parts of the world.

Q. Thank you, Mr. Kaplan.

Mr. McConnell: You may cross-examine.

Cross-Examination by Mr. Dodds.

Q. Mr. Kaplan, what percentage of your total radio
823 business is represented by this transoceanic set that you just mentioned?

A. I don't know that percentage.

Q. One percent, two percent?

A. It is more than one percent.

Q. Two percent?

A. It is more than one percent but probably less than ten.

Q. Less than five?

A. I don't know.

Q. Do you know what other major radio and television manufacturers than Zenith are not members of EIA?

A. The only other one I know of for sure is Admiral, and they are either reporting, or there is an estimate made for their production. I understand they report, but I don't know this.

Q. You don't know that they report?

A. No, but I do know that an estimate is made or that they report. I am not sure which.

Q. You don't know that they report?

A. I don't know that.

824 Q. How about Emerson?

A. I don't know, but I think they do.

Q. Do you know whether they are a member of EIA?

A. I think they are.

Q. Are you sure of that?

A. If you are referring to my testimony, I said I don't know of any major manufacturer that is not a member.

Q. Well, you don't consider Admiral a major manufacturer?

A. I said that is not a member or who doesn't report or for whom—

Q. Just a minute. I am not asking about reporting, I am just asking about membership. I have asked you about what major manufacturing companies were not members, and I think you said that Admiral was not.

A. Admiral and Zenith are not members.

Q. Do you know whether Emerson is?

A. I don't consider them a major manufacturer.

Q. All right, would you consider them an intermediate manufacturer? They are certainly not a small manufacturer.

825 A. I consider them a small manufacturer.

Q. Do you know what their volume of business is in a year?

A. Yes.

Q. What is it?

A. Well, in television we happen to know what it is. It is less than 200,000 pieces a year.

Q. And what is that in dollars?

A. In dollars, that might be 20 million dollars.

Q. And you consider that a small company?

A. Everything is relative, Mr. Dodds.

Q. Please answer the question.

You consider 20 million dollars a small business?

A. In sales.

Q. In sales?

A. Yes.

Q. Now, do you know whether Packard-Bell is a member of EIA?

A. I don't consider them a major manufacturer.

Q. Please answer the question, Mr. Kaplan.

826 A. I don't know.

Q. You don't know?

A. No.

Q. Now, of these non-members of EIA, do you know which ones report and which ones don't, and I am not

asking now for speculation or guesswork. Do you know which ones report and which ones don't?

A. Is your question confined to major manufacturers?

Q. Well, let's consider all the ones that I mentioned, for example, Admiral, Emerson, Packard-Bell—Zenith, you said, does report.

A. I would want that question a little more confined. I am not sure what the question is.

Q. All right, I will ask you specifically: Do you know that Admiral, Emerson and Packard-Bell report their sales statistics to EIA?

A. No, I don't.

827 Q. You don't know, then, what their accuracy might be?

A. I don't know what their accuracy is, but—

Q. All right.

Now, you say that you believe the EIA figures include estimates for those companies that do not report. Do you know how those estimates are made?

A. No, I don't.

Q. That answers the question. I just want to know what you know, Mr. Kaplan.

There are quite a number of United States Radio and Television manufacturers that have manufacturing subsidiaries in Canada, are there not?

A. There are some.

Mr. Dodds: I am sorry, your Honor, but I still have not got these exhibits straightened out.

The Court: That is all right. Don't be concerned about it. We are making fine progress.

Mr. Dodds: There was testimony yesterday afternoon about a concern in Canada that received a notice from the Canadian Radio Patents Limited which notice includes the names of the Canadian Companies which were licensees of CRPL.

The Court: I remember that.

Mr. Dodds: That is the one that I am looking
828 for.

The Court: And they were read off.

Mr. Crotty: Mr. Dodds, look at Exhibit 138 and see if that is what you are talking about.

Mr. Dodds: 138? Thank you.

May I borrow your copy? That is one that it seems we have not got.

Mr. Crotty: Sure. I don't seem to have it either.

Mr. Dodds: Can I have this?

Mr. Curtis: Yes.

Mr. Dodds: Thank you. This apparently isn't complete because it doesn't have the notice in it.

Mr. Curtis: You want the notice?

Mr. Dodds: Yes.

Mr. Crotty: This is the one I had in mind.

Mr. Curtis: Yes, this is the one.

Mr. Dodds: Thank you.

829 By Mr. Dodds:

Q. I am referring to defendant's Exhibit 138, about which there was some testimony yesterday. This Exhibit includes a notice dated in 1958 from the Canadian Radio Patents Limited listing a number of Canadian companies which are licensed by that organization. I would like to ask you as to which of these you know whether or not there is an American, U. S., counterpart. The Canadian Admiral Corporation, is there a U. S. counterpart?

A. I believe that is a subsidiary.

Q. And the Canadian General Electric Company?

A. I assume that is a subsidiary.

Q. And the Canadian Westinghouse Company?

A. I assume that also is a subsidiary.

Q. And Emerson Radio of Canada?

A. I assume that is a subsidiary.

Q. And Hallicrafters of Canada Limited?

A. They are no longer in business, I don't believe, up there.

Q. They were a subsidiary of Hallicrafters Company in Chicago?

830 A. Why don't you ask me why they went out of business.

Q. All right, why did they go out of business?

A. Because it was uneconomic to stay up there.

Q. Do you know that of your own knowledge?

A. Yes.

Q. Or did somebody tell you?

A. The officers of Hallicrafters told me.

The Court: You mean that it is out of business in Canada?

The Witness: Yes.

The Court: But it is not out of business in America? It is in business in America.

The Witness: Yes, sir.

The Court: All right.

By Mr. Dodds:

Q. The Philco Corporation of Canada?

A. I assume that is a subsidiary.

Q. And the RCA Victor Company Limited?

A. I assume that is a subsidiary.

Q. The Spartan Company of Canada Limited?

A. I don't know the American counterpart.

831 Q. You know of the Sparks Wittington Company, do you not?

A. Are they still in business?

Q. It is my impression that they are still in business as the Spartan Company. I think they changed their name. You don't know about that?

A. I don't know that Spartan is in business.

Q. It is listed on the New York Stock Exchange, incidentally.

The Court: He just buys Zenith.

By Mr. Dodds:

Q. Now, I think you testified that Zenith was the largest manufacturer of television receivers in the United States, isn't that correct?

A. I did not testify to that, but I will.

Q. I thought you did.

The Court: Somebody else has, and it was in the opening statement, too.

By Mr. Dodds:

Q. The figures that Mr. Stevenson gave, I think, indicated that for the last period on which they reported that Zenith had more than twenty percent of the entire 832 market in television receivers in the United States.

A. Black and white.

Q. Black and white, yes.

Now, I think that you also testified that there is a relationship between volume of business and costs; in other words, as your volume goes up, your fixed charges don't go up correspondingly, isn't that correct?

A. That is correct.

Q. So that I assume Zenith has relatively low cost of manufacture because of its large volume?

A. For comparable products and comparable quality, yes.

Q. Yes, that is what I am referring to.

Now, if Zenith—I think you testified that Zenith explored the possibility of establishing a Canadian manufacturing subsidiary.

A. Several times.

Q. And if it established that subsidiary and if it was able to secure the same percentage of the market as is

secured of the American market, on which Mr. Steven-
833 son based his assumed figures, then its costs would also be correspondingly lower than its competitors in Canada, would it not?

A. This is possible.

Q. It is quite likely, isn't it?

A. (No response.)

Q. So that do you know of any factor that would make it less attractive to Zenith to establish a manufacturing subsidiary in Canada than it would to these companies that we have just gone over?

A. Well, Mr. Dodds, that was not the basis of our decision.

Q. So that do you know of any factor that would make it less attractive to Zenith to establish a manufacturing subsidiary in Canada than it would to these companies that we have just gone over?

A. Well, Mr. Dodds, that was not the basis of our decision.

834 Q. Just a minute, please. Will you answer my question?

Do you know of any factor which would make it relatively less attractive for Zenith to establish a manufacturing concern in Canada than these other American concerns that have subsidiary manufacturing organizations in Canada?

A. Well, I will have to answer it a different way, then. It is more economical to us to manufacture those same products—

Mr. Dodds: Your Honor, I move to strike the answer. That is not responsive at all.

The Court: If you will answer his question, I am sure that Mr. McConnell will ask you the question that you now want to give the answer to. Just answer this question and then you can straighten yourself out when he gets you back.

By the Witness:

A. Would you ask the question again.

Mr. Dodds: Would you read back the question, please, Mr. Court Reporter.

(Question read.)

By The Witness:

A. Well, specifically, to answer that question, yes,
835 I know of several factors.

Q. All right, what are they, please.

A. Well, for instance, RCA has many other businesses in Canada. General Electric has many other businesses in Canada. Westinghouse has many other businesses in Canada.

Q. How about Philco?

A. They have other businesses in Canada.

Q. Just appliances, though, isn't that correct?

A. Yes, but this takes overhead.

Q. How about Arvin Industries?

A. I don't know about them.

Q. How about Travler?

A. I don't know about them.

Q. All right.

Mr. Kaplan, do you know whether the television sets sold in Canada are made to operate on the same frequency, that is, 60 cycles, and the same voltage, that is 110 volts, as the American sets?

A. It is my understanding that there are modest changes to conform to their—what will be the equivalent of their underwriters' requirements, but otherwise I under-
836 stand they are the same.

Q. You understand that there is a 60-cycle power supply through Canada? Isn't most of it 25 cycles?

A. I am sure it is not.

Q. Well, I am sure it is, but—

The Court: Well, we will get you under oath in a minute.

Mr. McConnell: I move to strike out the testimony of Mr. Dodds.

The Court: We will strike it.

By Mr. Dodds:

Q. All right, how about England, what frequency and power supply voltage is prevalent in England?

A. I can't answer that, Mr. Dodds. That is an engineering.

Q. How about Australia?

A. I can't answer that.

Q. Now, I think you testified that the tariff on television sets exported to Canada is 20 per cent. Now, what is the basis for your estimate that Zenith would expect to achieve the same percentage of the market in Canada
837 as it has in the United States with a 20 per cent tariff differential?

A. Well, in the first place, our sets, because of their higher quality and basically better construction always sell at a premium.

Now, in addition, this 20 per cent tariff which I assume you consider a penalty is, to a great extent, offset by the smaller volume of production in what we estimate to be the lower efficiency of the Canadian plants.

838 Q. Well, I understand your strong tendency to claim that the Zenith radio and television receivers are bigger and better than those of your competitors; do you think your competitors would agree with that statement?

A. I wouldn't know.

Q. Mr. Kaplan, did you ever make an application to the ARTS, that is Australian Radio Technical Services for a license to import either radio or television receivers into Australia?

A. I don't know.

Q. You don't know that you did, though?

A. No, that is right.

Q. Now, when we talk about Britain and Australia, Britain particularly, you do know that Britain has five different standards of transmission, five hundred and twenty-five lines.

A. No, they are 405.

Q. 405 lines, I mean, and positive modulation.

A. And AM sound.

Q. So that if you were to manufacture those sets—and, also, amplitude modulation for sound—so if you were
839 to manufacture those sets in the United States, they couldn't come off of the same assembly line as the sets for domestic sale, is that correct?

A. That is correct.

Q. Now, taking your figures—first, I will ask this; do you know what the annual production in sale of television receivers in England is?

A. No, but that is part of this Exhibit 220.

Mr. Dodds: Can I see that 220?

Mr. McConnell: We had it a minute ago. Here it is, right with your own papers.

Mr. Dodds: Thank you.

By Mr. Dodds:

Q. According to these figures of Exhibit 220, for the last full year of 1962 there were one million three hundred and seventy thousand television sets sold or produced, I don't know which the figure is, in the United Kingdom; that is roughly about a fifth of what the United States volume of production sales is, isn't that correct?

840 A. That is correct.

Q. In round figures?

A. But not for '62.

Q. That is 1962. That is the last year for which there are complete figures, on this chart, at least, that is in evidence. That is what I am relying on.

The Court: I think what Mr. Kaplan's question is, is whether this is the fifth of the American production in 1962, is that—

Mr. Dodds: No, I am talking about—

The Witness: It is more than a fifth.

Mr. Dodds: Well, not very much more.

The Court: Well, roughly—

By Mr. Dodds:

Q. It was about six and a half million, wasn't it, in the United States for 1962?

A. That is right.

Q. And this is a million three hundred and seventy thousand. If it was a million three hundred thousand it would be exactly a fifth.

A. That is right.

841 Q. So now, your estimating that, other conditions being as you would like to have them, that you might get twenty-five per cent of the market in Great Britain.

A. No.

Q. So that would be twenty-five per cent of five per cent, and that would be 1.25 per cent based on United States—total United States market. Is my arithmetic correct?

A. Tweny-five per cent of five per cent?

Q. Yes.

A. What is the five—yes, that is right.

Q. I am sorry, I misled you. It would be one-fifth of twenty-five per cent, or five per cent of the U. S. market.

The Court: I am having difficulty with those fractions.

Mr. Dodds: I am, too, your Honor.

The Court: Maybe we can think clearer after lunch. We will take our noon recess at this time.

(Court recessed until 2:00 o'clock P.M.)

842 (Caption—59-C-1847)

Before the Hon. Richard B. Austin,
Thursday February 20, 1964,
2:00 o'clock, p.m.

The trial was resumed pursuant to recess.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

843 The Clerk: Case on trial.

Mr. McConnell: Mr. Kaplan, will you get back on the stand, please.

SAMUEL KAPLAN, called as a witness on behalf of the Defendant, having been previously duly sworn, was examined and testified further as follows:

Cross-Examination (Continued).

Mr. Dodds: I think we were a little involved in arithmetic at the end of the morning session.

The Court: That's right.

Mr. Dodds: I think there was an agreement that the British market for television receivers was approximately one-fifth that of the U. S. market in '62.

The Court: That's right.

By Mr. Dodds:

Q. And that Zenith asserted a share of the British market of a quarter of the U. S. market, or approximately 5 percent of the market?

A. That's right.

844 Q. So then, translating in terms of the U. S. market that would be one-fifth of five per cent, or one per cent of the U. S. market—is that correct—would be your reasonable expectation of sales in Great Britain?

A. Yes.

Q. And I think that you also agreed that it would involve a different assembly line to produce a British receiver than a U. S. receiver. So taking that into account, with a volume of production for British export of only one-twentieth of the U. S. receivers, would you achieve the same economies of production, or expect to achieve the same economies of production?

A. Are you through with your question?

Q. Yes.

A. Yes.

Q. Well, would you explain that?

A. Well, because to a great extent the British receiver would have many of the components and a great portion of the work content that would be very similar. So that the components that feed that would be made together with the millions of other components.

845 Q. That's right. Now, isn't a substantial factor in the cost of a television receiver the engineering?

A. Yes.

Q. So those portions of the British television receiver which were not common would require special engineering, wouldn't they?

A. To the extent that it is different, yes.

Q. Yes. And that would involve the detector in the sound channel, and it would involve the scanning oscillator?

A. I can't answer that.

Q. Oh, all right. Anyway, there would be a number of things that would be involved. So that engineering applied to those would be divided over a base of about one per cent

of the base that you apply your engineering to U. S. sets, as I calculate it; is that correct?

A. Well, you are talking only about a very small portion of our engineering.

Q. You said you didn't know about the scanning oscillator. How do you know it's such a small portion?

A. Because I have discussed with our engineering department the extent of the difference.

846 Q. All right. That's what I asked you. How about the scanning oscillator?

A. I'm not prepared to discuss technical problems.

Q. I'm just asking what components.

A. The extent of the problem.

Q. All right. The scanning oscillator, as I understand, and the deflection system is a fairly substantial portion of the cost of a television receiver. But you say you don't know whether the scanning oscillator has to be different.

Now, it is my information that if you are going to scan at 525 lines or 405 lines, you need a different kind of scanning system. It has different numbers in it.

A. Mr. Dodds, I would like to answer by saying that this difference is so profound that our distributor changes them in his back room.

847 Q. On a laboratory or hand basis, not on the production of several thousands or hundreds of thousands of receivers.

A. No. But I think this illustrates the extent of the difference.

Q. Well, the extent of the difference is a question of how skilled, first, your man is, and how long it takes him to do it in the back room. If you are going to do it on a production basis, you can't spend very many minutes on an assembly operation.

A. I wouldn't think it would take many minutes.

Q. But you don't know whether it would or not, because you don't know anything about the scanning oscillator.

A. No. I am not a technician.

Mr. Dodds: That's all.

The Court: All right. Anything further?

Mr. McConnell: Is that all?

Mr. Dodds: That's all.

The Court: Yes.

848 *Redirect Examination by Mr. McConnell.*

Q. You were asked about the people who either were members or who gave statistics to this EIA organization in your examination this morning.

Over the noon hour, have you made some inquiry from that company about that subject?

A. No. Our inquiries were made to our own statistical department, who are familiar with the contents—

Q. Yes. What did you find out?

A. (Continuing.) of the EIA reporting. I had previously testified that all major members of the industry reported. I now find out that Admiral does report, RCA reports, Zenith reports, Warwick reports for Sears, General Electric, Westinghouse, Curtis-Mathes, Packard-Bell, Hoffman, Sylvania, Motorola, Philco, and Magnavox do report.

Mr. Dodds: Your Honor, I wish to move to strike the answer on the basis that it is obviously hearsay.

849 The Court: I think it was probably hearsay this morning, and I think this is an effort to correct his testimony.

Mr. Dodds: I don't know—my recollection was he said, this morning, he didn't know. He knew a certain—

The Court: I thought this morning he said that all of them either were members or reported to the institution.

Mr. McConnell: That's what he said.

The Court: Now, we are getting into a little more specificity.

Mr. Dodds: No, your Honor. He acknowledged, I believe, that for those who were nonmembers and did not report, estimates were made by the association. As a matter of fact, he was not sure just what the accuracy of those estimates were. But he said he didn't know which ones reported.

I say that what he is stating now is pure hearsay. I move to strike the answer.

850 The Court: It may stand for what it is worth.

By Mr. McConnell:

Q. Now, you were asked about manufacturing operations up in Canada by Mr. Dodds. I want to call your attention to a company known as the Motorola Company. Do you recall whether or not they had manufacturing facilities in Canada?

A. Yes. We visited their plant in 1953.

Q. Can you tell us what happened to their manufacturing operation in Canada?

A. Well, it is closed. They have abandoned their manufacturing operation.

Q. What would you conclude from that?

A. I would conclude that it was not successful.

Q. Do you know of any other company that attempted to manufacture in Canada and then abandoned it?

A. I think Sylvania has abandoned their operation.

851 Q. Now, of the other companies that are there, I think you stated this morning in your cross-examination that they had other activities. What did you mean by that statement?

A. Well, RCA, as you know, is a broadly based communications company. And they have many other

electronic products that are made in their Montreal operation.

852 Q. You mean over and beyond radio receivers and television receivers?

A. That's right.

Q. Is that true of the other companies that you mentioned, such as Marconi, Philips, and so forth?

A. Marconi has other equipment, and my recollection is that their operation has not been outstandingly successful. I don't know—I know Philips has other products; I don't know how to measure their success.

Q. Mr. Dodds asked you a question this morning, and you started to answer it or did answer it, and then qualified it by "but," and then you were cut off. Was there something else you wanted to add to that?

A. I am not sure what the question was.

Q. Well, I don't recall just what it was now. Was there anything that you were cut off from, that you wanted to—

A. Yes, I recall, but I don't recall the subject of it.

Q. Well, what would you want to add?

853 The Court: I was in error, then, assuming that you would ask the question that he wanted to give the answer to. I will confess error on that.

Mr. McConnell: I hate to lead your Honor into error on that sort of a basis.

By Mr. McConnell:

Q. Do you recall what it was, or not? If not, we will leave it.

A. No, I do not, Mr. McConnell.

The Court: And I don't either.

Mr. McConnell: I have no further questions.

Mr. Dodds: I have a couple, your Honor.

Recross Examination by Mr. Dodds.

Q. I think you said you inspected the Motorola Canadian plant in 1952?

A. '53, I think it was.

Q. '53. And do you know of your own knowledge the reason for their abandonment of their Canadian operations?

A. Not of my own knowledge. But my answer was that I concluded it was not successful.

854 Q. Does the same answer apply to Sylvania?

A. Yes.

Q. All right. Now, Mr. Kaplan, how many television manufacturers were there in the United States in 1953? There were about 50, were there not?

A. I think there were more than that.

Q. And how many are there now?

A. I think there is less than 40.

Q. There is less than 20, are there not?

A. I don't know. I think it's less than 40.

Q. Let's name a few of them. I think my recount is about 16.

There is RCA, General Electric—if you disagree with me, say so, would you, Mr. Kaplan?

There is RCA, General Electric, Westinghouse, Sylvania, Magnavox, Warwick, Muntz, Packard-Bell, Zenith, Admiral. Can you think of any I have missed?

A. I don't think you mentioned Philco.

Q. Philco, right.

A. Did you mention TravLer?

855 Q. TravLer.

A. Did you mention Wells-Gardner?

Q. Wells-Gardner. Thank you.

A. Then I can assume we have overlooked many others, Mr. Dodds.

Q. Well, name them.

A. I don't—I mean, it would be so simple to get a list of them.

Q. Well, I had a list, and my recollection is there is about 16. And there were more than 50 in 1953.

Now, do you think those United States television manufacturers went out of business because of CRPL?

A. I have no reason to know why they went out.

Q. You wouldn't draw that conclusion, though, would you?

A. I wouldn't draw any conclusion.

Q. You wouldn't draw that conclusion?

A. I wouldn't draw any conclusion.

Mr. Dodds: Thank you. That's all.

The Court: Is that all?

Mr. McConnell: That is all.

856 The Court: All right.

(Witness excused.)

857 Mr. McConnell: I want to recall Mr. Crotty for just two or three questions on an entirely different subject.

The Court: All right.

FRANCIS W. CROTTY, called on behalf of the defendant and counterclaimant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Mr. Crotty, you have already been sworn as a witness in this case?

A. I have.

Q. I asked you to compute the legal expense which was occasioned by you and your associates in the trial of a patent case in this court. Did you make some research or investigation to determine what those costs are?

A. Yes, I did.

Q. Tell us what the source of your data was and what it is.

A. Well, I have, as a practice, my associate attorneys keep a record of their times in diaries, charging the
858 times that they devote throughout a day to the project at hand, and I had the attorneys review their diaries for the period in question.

The Court: Well, I want to know what period that is.

The Witness: Well, the period that I concerned myself with was from '59 through May of '63.

By Mr. McConnell:

Q. That is four years prior to this counter-claim?

A. Yes.

The Court: Well, we are getting more specificity than we had before. You just said "a patent case", and I was sure it wasn't this one because you didn't so specify it. This is the one, now, that you are talking about.

The Witness: Yes, your Honor.

The Court: That is fine. All right.

By the Witness:

A. (Continuing.) And they reported to me the num-
859 ber of hours recorded in the diaries devoted to the study of Hazeltine patents, and I have had those times collected, summed and converted into salary costs.

By Mr. McConnell:

Q. All right, can you tell us who the gentlemen are and the respective hours of which their time records show they spent on this Hazeltine patent problem?

A. Well, first there is myself, and I could give you the hours by the years, but I can't give you a summation of the total hours. I haven't added that up. I can give it to you by the year.

Q. Well, let me ask you if you haven't added it up.

I show you a document which is marked Defendant's Exhibit 40 and ask you whether or not you prepared that?

A. Yes, this was prepared for me by just having these tabulated, and this does give the total hours.

860 Q. How many hours did you spend?

A. For myself, it was fifteen hundred and twelve and a half hours.

Now, I should point out to you that that includes my time devoted to this litigation in not only the patent aspects, but also this particular counter-claim.

Q. All right.

A. There was Mr. J. G. Wright, who is to be distinguished from J. S. Wright, our president; he spent twelve and a half hours on the problem.

Mr. J. E. Tracy—Wright and Tracy are associate attorneys in my office; he devoted eighteen hours.

Mr. A. H. Sanders, this is my draftsman who devoted time in preparation of exhibits and so forth in the patent trial of this litigation; his time was sixty-six hours.

Mr. C. J. Sindelar, an associate attorney, fourteen and a half hours.

Mr. C. J. O'Connor, an attorney, seventy-eight and a half hours.

861 Mr. R. J. Miller, an attorney, thirty-one hours.

Mr. H. Drake, an attorney, one hundred and ninety-nine and a half hours—actually, One ninety-nine point four.

Now, three engineers devoted some time in helping us on the technical aspects of the patents. I have accounted for their times as well. A Mr. W. Stroh, one hour; Mr. John Renick, fifty and a quarter hours; Mr. Charles Heuer, eighty-nine hours.

862 Q. All right, now, did you put a dollar amount on their time?

A. I had the payroll department convert the time to a salary cost, using the rates of pay of these individuals, and I have the summation of that.

Q. What is the summation of that?

A. For all involved, it was $25,041.33.

Q. Can you break it down?

A. I can't break it down from that sheet. I can break it down from a worksheet that I have here, I think.

For my own case it is $21,359.72.

For Mr. Wright, $63.10.

Mr. Tracy, $119.99.

Mr. Sanders, $263.06.

Mr. Sindelar, $66.82.

Mr. O'Connor, $477.33.

Mr. Miller, $118.03.

Mr. Drake, $14,779—I am sorry, it is $1,477.92.

Mr. Stroh, $6.81.

Mr. Renick, $495.85.

Mr. Heuer, $592.70.

863 Q. All right.

Now, did you have some other expenses?

A. I did. The document that you handed to me, which gives a summation of the times of the individuals, has as its first item disbursements in the amount of $23,587. This represents the cost to Zenith of the patent trial of this litigation, having in mind the cost of persons who are not on your payroll, such as our technical expert, Mr. Johnson, our trial attorney, Mr. McDougall, the reporting costs. This is a total figure for the patent trial.

Q. This is actual disbursements?

A. Yes, it is.

The only other thing I have here is an item of travel expense in the amount of $1,437.39, which represents the travel that I or my men have undertaken in connection with patent studies or the document studies, and things of that nature.

Q. Does that represent an actual disbursement?

A. Yes, it does.

Q. What is the total amount? Have you got a total on the whole thing?

864 A. I do have a total, and I should point out that this computation goes only to December 31st of 1963, and the total was $50,065.72.

Mr. McConnell: You may cross.

Mr. Dodds: No questions.

The Court: All right. Thank you.

(Witness excused.)

865 Mr. McConnell: The plaintiff rests, your Honor.

Thereupon the Defendant and Counter-Plaintiff Rested Its Case in Chief.

The Court: May I take your motion under advisement and go on with the evidence?

Mr. Dodds: I beg your pardon?

The Court: I say, may I take your motion under advisement and go on with the evidence and save some time?

Mr. Dodds: All right.

The Court: All right. The motion for a finding for the defendant at the end of the plaintiff's case is taken under advisement, Mr. Court Reporter.

Mr. Dodds: Mr. Crotty seems to be a very popular witness. I would like to call Mr. Crotty.

The Court: All right.

Thereupon the Plaintiff and Counter-Defendant, to Maintain the Issues in Its Behalf, Introduced the Following Evidence, to Wit:

866 FRANCIS W. CROTTY, recalled as a witness by the plaintiff and counter-defendant for adverse examination, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Crotty, your name appears on Zenith's pretrial brief. Did you participate in its preparation?

A. Yes.

Q. And you accept responsibility for what is said in the brief, is that correct?

A. I helped Mr. Curtis prepare the brief, and I guess, then, I accept responsbility for it, yes.

Q. And you say that you do accept responsibility?

A. I guess so.

The Court: You mean that you are letting Mr. McConnell out of the responsibility?

The Witness: Well—

The Court: I will withdraw the question.

867 The Witness: We are all responsible, I guess.

By Mr. Dodds:

Q. Mr. Crotty, I notice throughout this brief the repeated use of the word "Pool"; now, I would like to ask you what your definition of "Pool" is.

A. We have used "Pool" in this brief and in this experience as the type of operation represented by the CRPL in Canada and the British Pool and the Australian Pool.

868 Q. I don't think that is the definition. I think those are examples. I would like a definition.

How do you define the word "pool"?

The Court: I have a legal dictionary "Words and Phrases" back here, Mr. Crotty.

By the Witness:

A. We are using this in the sense of a group of conspirators putting together their patent products in a single administration.

By Mr. Dodds:

Q. Well, I gather, then, you would not consider a pool a group of patents all of common origin.

A. The patent products, say, of a single company?

Q. Yes.

A. That is right.

Q. Even if they had ten thousand patents, you wouldn't consider that pool?

A. No.

The Court: Do you consider that Hazeltine runs a pool?

The Witness: If I consider Hazeltine's product, by 869 which I mean now the product of their own research, I would say no, your Honor.

The Court: But in regard to all that they own, do you consider that a pool?

The Witness: Well, they have a pool to the extent that they had licensed their own patents, and I believe under their arrangement with General Electric Company of England they have the licensing rights under the United States patents originating on the inventions of GEC in England; whether that is still true or not, I am not sure, but this is my recollection from the document.

By Mr. Dodds:

Q. That was the next subject I wanted to come to, Mr. Crotty.

Do you know of any Hazeltine patents of origin from the General Electric Company of England or of the AGA, and you know what I mean by "AGA", do you not?

A. Yes, I do.

870 Q. Do you know of any Hazeltine patents of origin from General Electric Company or from AGA of which Zenith was ever charged with infringement.

A. No, I do not.

871 Q. Have you ever run across, of your own knowledge, any television receiver that embodied the invention of any patent owned by Hazeltine from General Electric or AGA origin?

A. I have never examined a television receiver with that question in mind.

Q. The answer is no, then, is it not?

A. Yes.

Q. And did you ever conduct a validity or infringement investigation of any Hazeltine patent of General Electric Company, Limited, or AGA origin?

A. No.

Q. And, in fact, have you ever considered any Hazeltine patent of General Electric or AGA origin other than to give it a perhaps cursory glance?

A. I can't answer that. I don't know.

Q. You don't recall having done so?

A. No particular patent comes to mind. The reason I can't answer your question definitely is tha. if I am making an infringement study of a product I will examine patents from any of a variety of sources, and I can't tell you

872 that it didn't include some of GEC's.

Q. I didn't ask you whether it did. I say that you don't have any recollection of ever having done so.

A. No.

Q. Now, Mr. Crotty, does the Zenith Radio Corporation customarily give its dealers and distributors a patent indemnity?

A. I am not familiar enough with the contract agreements that the company may have with its distributors to answer that, but as a matter of practice, I would say yes.

Q. And does that indemnity include an agreement to defend infringement suits which might be brought against the distributor or dealer?

A. I can't answer that.

Q. Who would know that?

A. I am not the best one to answer that question, Mr. Dodds.

Q. Well, now, Mr. Crotty, you are vice president in charge of patents. This is a patent matter. If your dealer was sued with infringement, wouldn't you know about it?

A. Indeed I would.

873 Q. And wouldn't you ordinarily know about the patent relations on all phases of your company's activity?

A. I told you that while I couldn't tell you from familiarity with a distributor contract, that it was a contract obligation, I told you that as a matter of practice we do stand back of our product and we would indemnify it.

Q. Well, all right, then. As a matter of fact, would you normally, as a matter of practice, defend a dealer or a distributor if he were charged with patent infringement?

A. I don't know. He may not want us to.

From what you say, I assume that the suit would be brought against him.

Q. I am assuming that it is a patent infringement suit brought against one of your dealers or distributors based on a sale of a Zenith receiver; would you normally take over the defense of that suit or offer to take over the defense of that suit?

A. I am sure we would consider it with him, and it would have to be his choice, because, after all, he would be the named defendant and not Zenith.

874 Q. That is right, but you would offer to do so.

A. Yes.

Q. Do you recall whether you have ever had occasion to do so?

A. Not in my experience.

875 Q. You say not in your experience. Now, Mr. Crotty, do you know of any Hazeltine Canadian patent which you consider to be valid and to cover any Zenith radio receivers or television receivers which you may have shipped into Canada?

A. Yes.

Q. Would you give me the number of that, please.

A. I can't give you the number. I can identify it for you.

Q. If you would.

A. The Intercarrier Sound patent.

Q. That is not owned by Hazeltine. I said Hazeltine.

A. I beg your pardon. No, I don't.

Q. You don't know of any?

Well, now, if you don't know of any Hazeltine-Canadian patents which you consider covers a Zenith radio receiver, and if you customarily would offer, at least, to defend the dealer or distributor from patent infringements, what is their problem of the Canadian Radio Patents Limited insofar as Hazeltine is concerned?

A. Well, Mr. Dodds, you have actually sued me

876 on a patent that I thought was invalid.

Q. I am not asking what—

A. They would have the same worry, they would have the same threat that we have here in the United States as represented by Hazeltine.

Q. Well, Zenith is a pretty responsible company, and if some small dealer in Saskatchewan were sued and Zenith Radio Corporation undertook to defend them, do you think that that company in Saskatchewan would worry too much about having to pay the bill?

A. You would have to ask him, Mr. Dodds.

Mr. Dodds: That is all.

The Court: Do I understand that to your knowledge

none of the television or radio receivers that you ship to Canada contained a Hazeltine patent?

The Witness: Your Honor, the difficulty we run into is this—

The Court: I mean, can you answer that question?

The Witness: I am trying to answer your question.

These are matters that are open to dispute. For
877 example, we in this litigation had a patent in suit because Mr. Dodds took the view that it was a valid patent owned by Hazeltine and infringed by our product, and I took the view that the patent was not valid and was not infringed.

The Court: And was this article used on the merchandise that you shipped to Canada this one—

The Witness: This same circuit, I believe, your Honor—

The Court: This one that is in dispute, was that on the—

The Witness: Yes, the answer to interrogatories makes it clear that there is a Canadian counterpart of the patent in this suit, and I would presume that Mr. Dodds would take the same attitude with respect to the Canadian patent that he has with respect to the U. S. patent and we would have another dispute.

The Court: In regard to any other patent other than the one that is the patent in suit here, are you aware
878 of any other patent that they claim that you have infringed on anything that you shipped to Canada?

The Witness: Well, your Honor, when Mr. Dodds approached me in 1959 he brought to my attention four patents, and I assume that he would assume the same attitude with respect to the Canadian counterpart.

The Court: I understand that two of those four were eliminated or something.

The Witness: One I eliminated for him and the other two I think he dropped.

The Court: So that we have got down to the patent in suit, right?

The Witness: Yes. We finally got down to, by choice or otherwise, to discussing one in particular.

The Court: Are you, to your knowledge, using in your color television any patents that you feel they have a valid claim to that do not come from GE or AGA, or whatever that other thing is?

The Witness: There are nine patents that—

The Court: That is the nine I am talking about.

879 The Witness: —Hazeltine says we used. I have studied most of them. I am not prepared to give you a—

The Court: I mean that at this time you don't concede—

The Witness: No, your Honor.

The Court: All right. That is the most I could expect.

By Mr. Dodds:

Q. Just one question, Mr. Crotty, this patent in suit certainly hasn't deterred the Zenith Radio Corporation from becoming the No. 1 television receiver manufacturer in the United States. Why is it such a deterrent effect in Canada?

A. Well, this patent in suit is the only patent that CRPL can bring to bear in Canada even of Hazeltine origin.

Q. Yes, but you have no regard for it. Why is the situation any different in Canada than it is in the United States? The most that could happen would be an infringement suit as in the United States, of which you are

880 confident of winning?

A. I don't know what you want me to say.

Q. I want to ask you what was the difference in the situation that was any more of a deterrent in Canada than in the United States.

A. Well, in Canada your threats are made to our outlets. Your threats are not made to the Zenith Radio Corporation itself.

Q. Yes, but the practice of Zenith is to defend its outlets and indemnify them.

A. Mr. Dodds, you are talking about the effects on our retail outlets. You are not talking about the effects on me.

Q. That is what I am talking about—

A. These outlets, under these threats, have had difficulties.

881 Q. Well, your brief alleges that Hazeltine has harassed its dealers and distributors in the United States, so what is the difference?

A. I don't believe that our brief says that Hazeltine has harassed our dealers in the United States of recent years.

Q. I don't believe—

A. I think the reference in the brief, if you looked at it carefully, was back at the time when we first became a licensee of Hazeltine, which was back in the thirties, as you know.

Q. That is correct, but I believe—I won't take the time to check it—but I believe there is an indication that that is a policy of Hazeltine, to harass the dealers and distributors of an unlicensed manufacturer, and if that is the case, I don't see any difference between the situation in Canada and the situation in the United States, but if there is a difference, I would like to know what it is.

A. Well, I think there is a difference. Now, in Canada, for example, Hazeltine wouldn't be doing the harassing anyway. Hazeltine says that it has parted with its
882 right in Canada, and CRPL would be doing the harassing, not Hazeltine.

Now, in this country it may still be your practice, I don't know, but we have been licensed for so long in this country under your patents that we haven't experienced such harassment.

Q. So, as far as Canada is concerned, it is important whether Joe Jones or Willie Smith is the plaintiff in a patent infringement suit. Is that the substance of your answer?

A. I don't think so.

Q. Well, you are complaining that CRPL would be the plaintiff instead of Hazeltine. What is the difference?

A. Well, the CRPL is a pool.

Mr. Dodds: No more questions.

Cross-Examination by Mr. McConnell.

Q. You were asked to define the pool. Can you tell us who the pool members are in the Canadian pool?

A. As I recollect them, Canadian General Electric, 883 Canadian Westinghouse, Canadian Marconi, the Canadian Philips Company, Northern Electric—I believe that is the group of companies.

Q. Well, the Hazeltine patents are in that pool, aren't they?

A. The Hazeltine patents are in that pool, yes.

The Court: How did they get in there?

The Witness: They get in there through a contract arrangement that is distinguished from a stock ownership.

By Mr. McConnell:

Q. Well, the others put their patents in by a contract arrangement, too, don't they?

A. Yes, I guess they do.

The Court: I mean, is there some distinction between the way Hazeltine got in the pool in Canada and the other people?

The Witness: I don't think there is any distinction in how they got in. I think the only distinction is the take they get from the pool. I think Hazeltine's take is speci-

fied in their contract to be a certain amount of money,
884 and I think the shareholder's take is determined by their success in selling licenses.

885 By Mr. McConnell:

Q. Well, in any event, whatever the take may be, Hazeltine gets a part of the receipts of the pool, do they not?

A. Well, yes.

The Court: They don't get it through a conduit as they do through General Electric Limited in England, do they?

The Witness: That is correct. This comes directly from the pool.

By Mr. McConnell:

Q. They get it direct from the pool, and the receipts of the pool come from the licensing of all the patents in the pool, do they not?

A. Right.

Q. Now, all those patents in the pool blanket the entire electronics field, don't they?

A. They have over the years.

Q. And that pool can bring against Zenith or anybody else who hasn't got a license not only Hazeltine patents, but any patents that they have in the pool, can't they?

A. They can bring to bear the whole conglomeration of patents.

886 Q. And that is the threat that is made against your distributor up there, isn't it?

A. Yes. That is the big distinction between Hazeltine bringing—as a single patent owner. taking an action against somebody and the pool taking an action against somebody.

Q. Well, Hazeltine, when it gets in the pool, is responsible for the acts of everybody in it, isn't it, as a matter of law?

A. Yes, it is.

Q. So that the threat to your business up in Canada is the threat brought by the pool against your dealers and distributors to stop them selling Zenith radio sets which are imported; isn't that true?

A. That is the threat.

Q. Now, if a distributor buys sets from Zenith Radio Corporation here in Chicago and puts them in a warehouse, and then is threatened, what is the potential liability that that distributor has under the patent law?

A. His investment in those sets.

Q. What can happen to his investment in the sets?

887 A. He can lose it all.

Q. Why?

A. Because he can be required to just—well, they can become inalienable. He can't sell them. He can't do anything with them.

Q. Because he is using a licensed device which isn't covered by the Canadian patents; isn't that right?

A. That's right.

Q. Now, you know, do you not, that Zenith cannot get a license from that pool to send its sets by export, and to import into Canada; isn't that true?

A. Yes. We were told that by Mr. McConnell.

Q. And you were told that as recently as what—what was the last time you were told?

A. '59, 1959.

Q. Now, when Mr. McConnell came down here and threatened to sue you on some of the patents of the pool, did he mention that Hazeltine patent at that time?

A. Yes, he did.

Q. What patent?

A. I can't identify it by number.

888 Q. Well, tell us the device. What was it about?

A. It had to do with a centering magnet, as we call it, for a picture tube, as I recall it.

Q. And that was a Hazeltine patent in the pool?

A. Yes.

Q. Which he was administering?

A. Yes.

Q. And threatening you with suit on?

889 Mr. Diggins: If your Honor please, I would like to object here on the record. There is no conceivable way that the Canadian pool could have come down and threatened to sue Zenith under a Canadian patent, because Zenith is taking the position that they are not doing business in Canada, and I don't like these—

The Court: Of course, anybody can make idle threats.

Mr. Diggins: I don't believe that that kind of a threat was made, your Honor. I don't like the implication.

The Court: I mean, he is testifying it was made. You are pointing out that they couldn't fulfill it, but he could still make it. All right.

By Mr. McConnell:

Q. Well, at that time. you were sending sets up there which were liable to this sort of suit; isn't that the fact?

A. Yes, of course.

Q. Now, your difficulty, as I understand it, is that some distributors and some dealers, and important ones,

890 wouldn't do business with you because of that threat; isn't that so?

A. That has been our experience.

Q. Now, shortly after you talked to Mr. McConnell of the pool, and he threatened you with suit on this Hazeltine patent, did he have some other patents he was threatening you with suit on, too?

A. There were three altogether.

Q. Who did they belong to?

A. One to—one was owned by Philips and one by Canadian Marconi, if I remember correctly.

Q. Now, you have some patent protection up there in Canada, do you not?

A. Yes, indeed we do.

Q. And what is it?

A. Well, at the time he came down and had his conference with me, we had the licenses from RCA, from Western Electric, and from Canadian GE under the Canadian patent holdings of those companies.

Q. And you also had the Parker patent?

A. Yes, and we still have that.

891 Q. And you couldn't get Marconi or Philips or Hazeltine because they were in the pool; isn't that right?

A. That's right. We couldn't get them unless we engaged in local manufacture. McConnell said he could not grant a license for importation under their patents.

Q. Well, you couldn't get a license for doing the business that you wanted to do—make sets here and send them up and sell them in Canada?

A. That's correct.

Q. No matter what you paid for it; isn't that right?

A. That's right.

Q. What is this Intercarrier Sound patent that you were speaking of?

A. That has to do with the amplifying portion of a television receiver.

Q. And that is being asserted against you by the pool, you say?

A. No, because I have a license under that patent.

Q. That is the Parker patent?

A. That is the Parker patent.

892 Q. And you are licensed under that to export from the United States into Canada under Canadian patents, aren't you?

A. That is correct.

Mr. McConnell: I have no further questions.

Redirect Examination by Mr. Dodds.

Q. Did I understand you to say that Hazeltine received a cut in the income of CRPL?

A. I said that Hazeltine was paid directly by CRPL.

Q. It doesn't get a cut in the income of CRPL.

A. This may be a matter of definition. You are paid a certain amount of money by CRPL.

Q. I'm sure you have examined the agreement between Hazeltine and CRPL. And is it not a fact that Hazeltine receives a royalty, ten cents on each television receiver, with a maximum of $45,000 per year?

A. That is my recollection of it.

Q. Now, assume that Zenith exported a television
893 receiver to Canada which, if you can imagine this, infringed somebody's patent. Now, what could the owner of that patent do other than sue a distributor or dealer of Zenith in Canada?

A. Well, he could sue anybody who used or sole it.

Q. Yes. He couldn't sue Zenith, though.

A. He couldn't sue Zenith here in the United States, no.

894 Q. And Zenith isn't suable in Canada, is it?

A. Not the Chicago company.

Q. And I just want to make this one point clear. Did Mr. McConnell, Mr. Brian McConnell threaten to sue Zenith Radio Corporation on any patents administered by CRPL?

A. These people aren't that blunt. They just come and advise you of the patents they think you need.

Q. Please just answer the question yes or no.

A. They don't come out and say specifically, "I am going to sue you tomorrow," like you did.

Q. Will you please—now, will you please answer the question. Did Mr. Brian McConnell threaten to sue Zenith

Radio Corporation on any Canadian patents administered by CRPL?

A. He didn't specifically say to me he was going to sue us, if that is what you are asking.

Q. Did he indirectly say he was going to sue Zenith Radio Corporation?

A. I think he did it by implication.

895 Q. Did he explain to you how he would do that?

A. No.

Q. Well, you certainly couldn't have taken any such statement, if he made it, very seriously, could you?

A. Certainly you and I know he couldn't sue the Chicago company.

Q. Well, the Zenith Radio Company is the Chicago company, isn't it?

A. Well, we have a Canadian outfit too.

Q. But I understand that it doesn't sell television receivers, isn't that true?

A. No. That is not true.

Q. When did it start selling television receivers?

A. I am really not qualified to speak about it. My understanding is that Zenith in Canada does some distributing.

Q. It is my recollection that Mr. Wright's testimony wasn't quite that, but I will stand on the record, whatever it is.

896 Mr. Dodds: That's all.

The Witness: I thought he said that the Canadian company had accounted for about sixty per cent of the distribution in Canada.

Mr. Dodds: Whatever the record says I will stand on. That's all. Thank you.

Recross Examination by Mr. McConnell.

Q. There is no reason why they couldn't sue the Zenith subsidiary in Canada, is there?

A. No. But the subsidiary would have to deal in the product to be liable to suit.

The Court: I think you can sue, regardless of the fact they didn't have a chance of getting any place, you can sue anybody any place, any place that you haven't even been or where you haven't done anything.

The Witness: Yes, sir.

By Mr. McConnell:

Q. And they can sue your distributors, can't they?

897 A. Oh, yes.

Q. They can sue your dealers?

A. Oh, yes.

Q. They can sue anybody that buys the set and uses it, can't they?

A. Yes, indeed.

898 Q. And you knew that they publicized to the whole trade that that's what they were going to do, didn't you?

A. Yes, I did.

Mr. McConnell: That's all.

The Court: Anything further?

Mr. Dodds: No further questions.

(Witness excused.)

The Court: Next witness.

Mr. Dodds: I would like to call as the next witness for the plaintiff Mr. Westermann.

The Court: All right.

DAVID WESTERMANN, called as a witness on behalf of the plaintiff and counter-defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Westermann, will you identify yourself, your address.

A. David Westerman, 10 Colorado Place, Huntington Station, New York.

899 Q. Do you have a position with any of the Hazeltine companies? And if so, will you state what it is.

A. I am Vice President and General Counsel of Hazeltine Corporation, and I am President and a Director of Hazeltine Research, Inc.

Q. And how long have you been employed by any of the Hazeltine companies, and would you state briefly what your experience with them has been.

A. I've been employed by Hazeltine Corporation since 1950. I have been General Counsel since the fall of 1961, and a Vice President, and I have been President of Hazeltine Research, Inc., since mid-December of 1963.

Q. And would you state the circumstances under which you were elected president of Hazeltine Research, Inc. —and for abbreviation I think we will just call it HRI.

A. Mr. MacFarland, Wilfred MacFarland, who was President of HRI, died in early December, 1963. And I was elected President to succeed him.

Q. Will you tell the circumstances under which you became interested in Hazeltine licensing, and particu-
900 larly royalty schedules of Hazeltine licensing for color.

A. In January, 1963, Mr. Richard Beam, the President of Hazeltine Corporation, talked to me about the discussions in HRI, and the Patent Department, about a

proper method of licensing, particularly color television, and asked me if I would study the problem and advise him.

Q. And did you thereafter, in any way, participate in the development of a royalty schedule for color TV? And if so, would you describe what your activities were, what happened?

A. Yes. I made the study that Mr. Beam asked me to, and I participated under the direction of Mr. MacFarland in the evaluation of various proposals and drafts. And I gave him advice with respect to a draft which was distributed in March, and a supplement to that which was distributed to some companies in the industry, in May, prepared for distribution in early May 1963.

Q. Did these drafts of which you spoke—were there one or two or many, or what was the general score?

A. I think there were a number. I couldn't say how
901 many. There were a number before I started studying the matter in January and February of 1963, and there were several considered after I started my study.

Q. Do you recall a meeting in early February of '63 in which this matter was discussed?

A. Yes.

Mr. Dodds: Your Honor, I should now like to refer to a few exhibits. I included them all in a binder for convenience, and some of them will be offered from time to time, and some will be offered in a group as a result of the stipulation which was offered this morning.

902 By Mr. Dodds:

Q. And I should like to refer you, first, Mr. Westermann, to Exhibit 22—the other side, your Honor, has copies of these Exhibits—and I ask you if you can identify that Exhibit?

A. You have shown me DX 23. Is that what you want?

Q. It is 23. I had 22.

A. This is a Ruestow memo.

Mr. Dodds: I believe it is 22.

The Court: Theoretically, do I have that before me?

Mr. Dodds: Yes, it is in there, your Honor.

The Court: Listed as DX—

Mr. Dodds: Yes, as 22. No, I'm sorry.

The Court: Mine starts out as Plaintiff's 36.

Mr. Dodds: I'm sorry. I'm confused.

The Court: I know it confuses me.

Mr. Dodds: These are Defendant's Exhibits. I believe we won't have extra copies.

The Court: Well, keep that until I need it. I won't 903 be looking for something that isn't there.

Mr. Dodds: Yes, your Honor.

By Mr. Dodds:

Q. Will you refer to that and describe briefly the subject matter or the results of that meeting, Mr. Westermann.

A. This is a memorandum of a discussion held February 7th, it indicates, 1963.

Mr. Dodds: Would your Honor like to see this—

The Court: No, no. In case I want to, I will indicate.

By the Witness:

A. (Continuing.) —in which case Mr. Beam, you, Mr. Dodds, Mr. Ruestow, and I participated, considering a possible approach to the licensing problem.

I believe—I'm not familiar with the details on this memo now, but I believe it had no results directly. There were certain proposals made, and then others superseded them.

By Mr. Dodds:

Q. I think you previously mentioned a draft of March 20, '63. And I believe there has been some testimony 904 with respect to that. That is Exhibit 15.

Would you refer to that and tell us what you know about that draft, or to what extent you participated in it?

A. This was prepared basically by Mr. MacFarland, and he had advice of other lawyers, and advice from me with respect to it.

Q. And this letter, I believe it was, of March 20; Exhibit 15, what did it do? What was done with it, and what did it provide? Was this distributed to licensees, or prospective licensees?

A. I believe it was distributed to some licensees and prospective licensees, and the letter transmitted a proposed schedule of license terms for television receivers.

Q. All right. To the best of your knowledge, were any license agreements issued, including the royalty schedule set forth in Exhibit 15?

A. No, sir, not to my knowledge.

Q. Well, were there later conferences with respect to this color TV royalty schedule?

905 A. Yes. Specifically, in early May, 1963, I believe the first week, the 8th or 9th, there was a discussion of the number among a number of people concerned, and a modification to the schedule was adopted and prepared in a document dated, I believe, May 20th.

Q. Was there any particular defect or anything particularly wrong with this schedule of March 20th that was attempted to be corrected, or what was the purpose of this meeting that you mentioned?

A. The purpose of the meeting in early May, 1963 was to consider a proposal made by certain of the officials—

The Court: Officials of what—Hazeltine?

The Witness: Of Hazeltine, yes, sir; yes, your Honor.

By the Witness:

A. (Continuing.) to add an additional paragraph to this which became paragraph six in the document of May 20th. And the purpose of that was to provide a maximum

royalty for every possible patent selection by a pro-
906 posed licensee. And the way that was done was to take the royalty—

By Mr. Dodds:

Q. Before we come to that, Mr. Westermann, was there any particular deficiency or defect in this proposed schedule of March 20th, DX 15, which anyone at the meeting thought should be corrected?

907 A. Yes. It was thought that by the addition of this paragraph, there would be a maximum royalty for every possible selection of patents by a proposed licensee; whereas in the document here attached to the letter of March 20th, in that schedule, there were only maximums for certain selections.

Q. And in the—

The Court: Now, let me ask you, do you mean certain specific numbered patents, or a percentage, like this one for fifty per cent, two for eighty per cent, and three for one hundred per cent? Is that what you are talking about?

The Witness: In the March 20th document—

The Court: You must bear in mind that I haven't seen any of these.

The Witness: In the March 20th document, there are maxima only for certain groups of patents, specified groups.

The Court: And these are by groups rather than by patent numbers, or—

908 The Witness: The first group is a group of nine patents and one patent application. There is—

The Court: Are these by any chance the nine patents that Zenith was interested in?

The Witness: I don't know, your Honor.

The Court: All right.

By Mr. Dodds:

Q. Do you recall in the Exhibit 15, the proposal of March 20th, what the relationship between, say, maximums

for certain selected patents were with respect to maximums for the entire group? Do you remember what the maximums for the entire group were in this letter of proposal of March 20th, Exhibit 15?

A. For all of the Hazeltine patents, I believe it was $310,000, the maximum.

Q. And what relationship did that bear to, perhaps, certain selections of individual patents? Would they be more or less? Suppose the licensee—I believe the March 20th letter—

909 The Court: Are you saying 310 for a package deal; is that what you are saying?

The Witness: There was one—there was a maximum, among others, of $310,000 for all Hazeltine—

The Court: Is that what you call a package deal?

The Witness: Yes.

The Court: That's radio, monochrome, and color?

The Witness: Yes, sir.

The Court: Everything that you had anything to do with; right?

The Witness: I will have to refresh myself a moment.

No. I believe it was $310,000 for all color. Then there were different maxima with respect to monochrome.

The Court: And a different maximum in regard to radio?

The Witness: This didn't provide for radio.

Mr. Dodds: I might say, your Honor, that Hazeltine dropped royalties on radio in 1955.

910 The Court: Well, that clears some air then. Thank you. All right.

By Mr. Dodds:

Q. Now, then, would you turn to the modified proposal, the one with the additional clause six, which is Exhibit 16—and I believe that was a letter of May 20, 1963, of which a copy went to Mr. Crotty of Zenith; is that correct?

A. That's what this Exhibit is, yes.

Q. And what modification in the overall scheme did that letter of proposal effect?

A. That provided an annual maximum amount for each individual patent election, referring to the royalty rates for individual patents. It went up in increments of .05 per cent, so that at each increment there was a different maximum.

Q. Would you cite a couple of examples, say an election of patents which would result in a certain percentage royalty, and then give the corresponding maximum applicable to that selection.

911 A. Well, for example, this was a supplement to the March 20th document. And one of the groups or packages in the March 20th document would be the nine color patents and the application. The rate for that would be 1.65. And the maximum would be $275,000.

But the supplemental provision six for a royalty rate of 1.65 had a maximum of $265,000.

Q. And what was the relationship in this proposal between the maximum for the overall group, what you call the package license, and the maximum for any individual patent selections?

912 A. Well, the individual patent selections start with $50,000—

Q. Well, I should say any group of individual selections. What was the relationship between the maximum for any group? Supposing you elected these nine color patents. Would the royalties then be less or greater than that for the package?

A. The maximum would be somewhat less under this provision six.

Q. Would that be true for any combination of individual selections?

A. I believe so, but I'm not sure that that is so with respect to monochrome.

The Court: Is it my understanding that as of May 20, 1963, there were only nine Hazeltine color patents?

The Witness: No, your Honor. It is my understanding that there were nine patents and one patent application considered by our engineers and patent department to be of significant value in color television.

The Court: So in all there weren't more than ten?

913 The Witness: Of significant value.

The Court: In regard to color television.

The Witness: Yes, your Honor, but I believe—

The Court: And this two-seventy-five figure is just for television patents, right?

The Witness: It is for those nine and that application; yes, your Honor.

The Court: And it has nothing to do with monochrome television patents?

The Witness: No. Monochrome television was in a different section.

The Court: That would be in addition to the two-seventy-five?

The Witness: Yes, your Honor.

The Court: All right. Now, to get this clear, or to muddy it up again, is it my understanding that for all television patents, monochrome and color, you could get them for three-ten, for every television patent you owned, regardless of what kind it was? Is that what you are telling me?

914 The Witness: I don't believe so, your Honor. It would be $310,000 for all existing and future patents within the terms of the license with respect to color, and $80,000 for the same with respect to monochrome.

The Court: All right. Thank you.

By the Witness:

A. Mr. Dodds, may I also add, so that my statements are complete, that there was a $200,000 maximum on color until June 30, 1966.

By Mr. Dodds:

Q. Well, then, just to make it perfectly clear—

A. And also maxima with respect to monochrome.

Q. Just to make it clear, these figures that you have been talking about, the $275,000 and the $310,000, what was the earliest date on which those figures would have become effective?

A. After June 30, 1966.

Q. That is spelled out in that letter, is it?

915 A. It says:

"Until June 30, 1966, all licenses covering both patents and patent applications for use in both color and monochrome television receivers shall be subject to an overall maximum of $200,000."

Q. Was there any relationship between that and the outstanding commitment to RCA?

A. Yes, that was included because of the outstanding commitment to RCA, which has a lump sum of $200,000, and also because of a similar license to Sylvania.

Q. During this period that you have described for seeking a formula, was there ever any intention either to insist that a licensee take a package license, or to coerce him economically to take a package license?

A. Not to my knowledge.

Q. Was there just no intention, or was there an intention to the contrary, or what was the attitude of Hazeltine management at that time?

916 A. The intention of Hazeltine management, as I understood it—

Mr. McConnell: I object to their intention. I don't think that is relevant in this lawsuit.

Mr. Dodds: Intention is certainly relevant to any conspiracy that I heard of.

Mr. McConnell: No. Your intent—you are presumed to

intend the legal effects of your act. And when you get into a conspiracy, it doesn't make any difference what you say your intent was.

The Court: Now, we are getting back to the good guys and the bad guys we started out with. The purity of your intentions apparently makes no difference in this kind of a lawsuit.

Mr. Dodds: Well, it depends, your Honor, whether or not there may be any ambiguity in the document. I believe it is correct to refer to the collateral circumstances to resolve that ambiguity.

Mr. McConnell: That isn't a contract.

The Court: Going back to some figures that some-
917 body threw around a while back, a few days ago, that if you bought these individually they cost $435,-000, but if you got them as a package deal, it would be considerably less—

Mr. Dodds: We have an answer to that, your Honor.

The Court: I know you probably do. But I say if that is a fact, if that were a fact, if it is not subject to some explanation that I can't conceive of at this time, that I would think that someone perhaps would be warranted in drawing an inference that, perhaps, there was an attempt to coercion to make a package deal rather than an individual.

Mr. Dodds: I don't think your Honor will recall, but that figure of $435,000—and I think there was one of $500,000 tossed around—relates to a period a year earlier than what we are talking about now. That was a draft that was submitted to Mr. Crotty in March of 1962. Now, we are talking about May of 1963.

918 The Court: I say, using those figures as an example in regard to intent, I would say that perhaps if that were the fact, that it would not be way out to draw an inference that somebody is trying to sell somebody a package deal rather than an individual patent.

Mr. Dodds: I think that is correct.

The Court: I am not saying that is what we are talking about now. I am just giving you an indication as to how someone might arrive at what the intent was from those facts, if those are the facts.

919 Mr. Dodds: I think there was an objection to the last question.

Mr. McConnell: I object to this man stating what the intent of this company was. The Court will determine what its intent was from the facts in this case.

The Court: Well, I think I have indicated before, and I have given them some latitude in permitting them to say what their intention was, and at the same time saying that under the law it makes no difference what their intent was; so I will permit him to testify to what it was even though it makes no difference.

Mr. Dodds: Would the reporter read back the last question, please.

(Question read.)

Mr. Dodds: I guess we need the question before that, because this refers back to the preceding question.

The Witness: Well, I can—

The Court: Can you answer without going back?

The Witness: Yes.

920 Mr. Dodds: All right. Never mind, Mr. Reporter.

By The Witness:

A. It is my understanding that the intent was to determine reasonable rates for the individual patents and at the same time to be in a position to offer an over-all package to those proposed licensees who would desire, without having that over-all package price be unreasonably high and, therefore, preclude such companies' obtaining a license.

By Mr. Dodds:

Q. During this period of evolution of the royalty schedule for color licenses, do you know whether or not the Form 918 license, which I believe is Exhibit 2, Defendant's Exhibit 2, whether that was offered to any of the licensees?

The Court: In regard to color patents, you mean?

Mr. Dodds: Yes, that would cover both monochrome and color.

By The Witness:

A. During the period January 2—

By Mr. Dodds:

Q. To May 20.

921 A. —to May 20th, 1963, when I was concerned with this, Form 918 was not offered, to my knowledge.

The Court: Prior to that had it been?

The Witness: I understand it had been.

The Court: All right.

By Mr. Dodds:

Q. Now, will you turn to Exhibit DX-15, Paragraph 4(a). At the time that was drafted, what did you understand that clause to mean?

A. I understood our intent was to provide to proposed licensees the same maximum that was outstanding in the licenses with RCA and Sylvania.

Q. Did you recognize, at the time, that that paragraph might have a different meaning?

A. I did not, no.

Q. Have you since come to realize that it could have a different meaning?

A. Yes.

Q. And what were the circumstances of that?

A. On looking at it last evening because of a question

in my mind raised, I believe, listening to Mr. Crotty's
922 testimony here yesterday morning, I believe.

Q. And what—

A. And the question in my mind was whether this had been offered as a $200,000 maximum available only to a proposed licensee who would take an entire package of all our color and all our monochrome, present and future, during the term of the license.

Q. Was that the intent of that clause?

A. I don't believe it was.

Q. Were any licenses granted by Hazeltine including the clauses of Exhibit 15 prior to May 22, 1963?

A. No.

Q. If anyone had called your attention at any time to the partial meaning of that clause, what would you have done?

Mr. McConnell: I object.

The Court: That is pretty iffy, and the objection is sustained.

By Mr. Dodds:

Q. Can you tell me whether this clause of Exhibit 16 and Exhibit 15, of which there was a modification, did you consider those at that time a final proposal of Hazel-
923 tine for a granting of licenses under its color patent, or as an evolutionary step, or as a basis of discussion, or what did you consider that proposal to be?

Mr. McConnell: Well, I will object to that. The document is in evidence. It speaks for itself. Now, what this witness considers it to be—

The Court: All the Court considers it to be is the best offer that they had that day.

Mr. McConnell: Well, I think that is probably true. I think that is exactly what it was.

The Court: We have one in March and we now have an-

other one in May, and I assume that if anybody had come in between March and May they would have got the March offer and if they came in right after May they would have got the May offer, and I don't know what they would have got in July, but—

Mr. Dodds: Your Honor, I think the simple answer to that is, at least in any business that I have been con-
924 nected with, is the first offer a final offer. It is usually someone makes an offer and then there is some haggling.

Mr. McConnell: That is a matter of argument.

The Court: I have had enough pretrial conferences to know that that is a fact.

Mr. Dodds: What I am asking this witness is whether they consider this a final, absolute proposal or whether they consider this, you might say, an invitation to negotiation.

The Court: Well, I would say that unless you have a stranglehold on the market everything is open to negotiation, and I will so assume without him so stating.

Mr. Dodds: Is the witness permitted to answer, your Honor?

The Court: All right, you can answer if you want to. The objection is overruled.

925 By the Witness:

A. I believe what has just been said here is correct.

By Mr. Dodds:

Q. Would you state it in your own words.

A. I believe it was an offer subject to negotiation.

Q. Now, would you look at Exhibit DX-12, which was a draft license proposal, I believe, about which there was some testimony yesterday; will you state whether or not the proposal for a license represented by that draft had

been rejected or accepted before you became interested in the licensing picture?

The Court: May I have the date of this?

Mr. Dodds: This is the date of March 26, I believe, 1962, the one which resulted in the $400,000-odd figure.

The Court: All right, just so that I can identify it in my mind because, as you know, I haven't seen any of these. I am trying to keep it in my mind's eye without having seen them.

Go ahead.

926 By the Witness:

A. It is my understanding that this had been discarded before I entered the study in January of 1963.

By Mr. Dodds:

Q. Now, there were references in the defendant's pre-trial brief to some criticisms which Mr. Ruestow had of certain license forms. Those are represented in Exhibits DX-24, 27 and 30.

Would you look at those? Actually, what I intended to ask you was a general question; will you state whether or not drafts, all prior in which I have been criticized by Mr. Ruestow, had been abandoned prior to the submission of the proposal of May 20, 1963, Exhibit DX-16.

Mr. McConnell: I object to that as calling for a conclusion. Whether they had been abandoned, and were they subject to negotiation with my client. I think the Court will determine whether they have been abandoned or not.

Mr. Dodds: I said they were abandoned prior to
927 May 20, 1963, the date of the last proposal.

The Court: The only evidence I have is the one that happened in May of '62 between Mr. Crotty and Mr. Ruestow, and the next one that I am aware of is this one of March 1963. Now we have another one of May of '63.

Mr. Dodds: Well, there was still another. As a matter

of fact, there were many; so I asked the general question of whether or not Mr. Westermann knew whether or not all prior drafts which Mr. Ruestow had criticized had been abandoned by May 20 of 1963.

Mr. McConnell: My objection is that that calls for a conclusion on a whole branch of this case which the Court will decide.

Mr. Dodds: No conclusion about it. It is a simple fact. Mr. Westermann participated in drafting these several drafts and whether those drafts were still extant or whether they had been junked before May 20 of '63, that is the simple question.

The Court: As I understand, this March one was
928 never submitted to anybody, is that right?

Mr. Dodds: It was submitted, your Honor.

The Court: To whom—I mean to what—

Mr. Dodds: It was submitted to Zenith and it was submitted to a number of companies.

The Court: The March of 1963 one?

Mr. Dodds: Yes.

The Court: Well, then, I assume that at least in the minds of those to whom it was submitted, why, it did supplant the May of 1962 one.

Mr. Dodds: Yes. Actually, your Honor, part of Mr.—

The Court: And any intervening ones which—

Mr. Dodds: That is what I am asking, any intervening ones, whether the March 20 of '63 proposal or any prior proposals, whether or not they had been abandoned as of the time that the May 20 proposal was sent out.

The Court: I think that is—

Mr. McConnell: I can't see how we can be bound
929 by what is in this man's mind. They make certain proposals to us and whether or not they are abandoned—

The Court: I would assume that if this is a more favorable one for a licensee and a less favorable one for Hazel-

tine, that they have in effect abandoned them, and I will just assume that on the basis of common sense and everything else. I mean, if they are now offering in March of '63 a different proposal than they had prior to March of '63, that it is less favorable to Hazeltine and perhaps more favorable to a licensee, I will assume that, in effect, this does abandon the prior ones, and without asking his mental process or the mental process of a corporation or anything else. I will sustain the objection, counsel knowing at least what my thought processes are in regard to that.

Would this be a good time to recess, Mr. Dodds?

Mr. Dodds: Fine, yes.

The Court: We will take a short recess.

930 (Thereupon a short recess was taken, after which the following further proceedings were had herein:)

931 By Mr. Dodds:

Q. Mr. Westermann, is it your understanding that Mr. Ruestow approved the royalty schedule of the proposal of May 20, 1963, Exhibit DX 16?

A. That would be the schedule of March 20th as modified by the May 20th document?

Q. Right, yes.

A. It is my understanding that he did approve it.

Q. Would you describe briefly the relationship between the business of HRI and that of its parent, Hazeltine Corporation?

A. HRI is engaged in research and development principally in the television field and formerly the radio field and a licensing of patents in that field and does not sell any hardware products or manufacture them. It is wholly owned by Hazeltine Corporation, its parent, and Hazeltine Corporation's business, which it conducts itself, is research development and manufacture of advanced electronic equipment for military and other uses of the United States and allied governments.

932 Q. Are the products on which HRI works, that is, radio and television receivers, similar or different products than which the Hazeltine Corporation is engaged in developing and manufacturing?

A. I am not an engineer, but it is my understanding that they are very different.

Q. Do you know what the gross dollar intake of HRI was during the last audited fiscal year?

A. I am not sure I know the entire gross. There was both royalty income and interest income. I believe the royalty income was approximately five hundred thousand dollars or somewhat under that in the calendar year 1962. The interest income I am not sure of at the moment.

The Court: And the interest income comes from what, investments?

The Witness: Investments, yes, your Honor.

The Court: Is it my understanding that HRI is the one that gets the—I have got to be careful semantically, too—gets the money, and I won't say in what fashion 933 from the English patents?

The Witness: No, your Honor, that is Hazeltine Corporation.

The Court: All right.

By Mr. Dodds:

Q. It has been testified that Hazeltine Corporation, the parent, also gets money from Neutrodyne Proprietary Limited of Australia; in what form is that money received? Do you know?

A. Hazeltine Corporation is a stock holder of Neutrodyne Proprietary Limited and the money it receives is dividends declared for the stock holders.

The Court: The same as being a stock holder in the English General Electric Limited.

Mr. Dodds: Well—

By Mr. Dodds:

Q. Is Hazeltine Corporation a stock holder in the British General Electric Company?

A. No.

The Court: What is it?

934 The Witness: It has a contract with General Electric.

Mr. Dodds: That is all.

The Court: Is that all, Mr. Dodds?

Mr. Dodds: Yes, that is all.

The Court: Have you some questions?

Mr. McConnell: Yes, I do, your Honor.

Have you got that document, Mr. Dodds, that you were asking this witness about claiming that you were clearing up an ambiguity?

The Court: Which one, 15?

Mr. Curtis: 16, is it?

The Court: We have them over here, don't we, 16 and 15?

The Witness: This is 15, I believe.

The Court: The witness has something before him.

Mr. McConnell: I don't know what it is.

Mr. Dodds: The witness has those Exhibits, yes.

935 By Mr. McConnell:

Q. Is this the document that you were referring to where you said there was some ambiguity in the clause B about the maximum?

A. I believe it is, yes, this is the document, and I believe it is clause IVA.

The Court: This is the March '63 document or the March—

The Witness: March 20th, 1963.

The Court: All right.

By Mr. McConnell:

Q. It is IVA.

936 By Mr. McConnell:

Q. Now, that is the document that you were operating under up to the very time we filed this counter-claim—

Mr. Dodds: Your Honor, I object. There is no testimony that Hazeltine ever operated under that form of license schedule.

The Court: The objection is sustained to the form of the question.

By Mr. McConnell:

Q. All right. Are you a lawyer?

A. Yes, I am.

Q. Now, you were referred by Counsel to clause 4(b).

The Court: Of the same document?

By Mr. McConnell:

Q. Of this document dated March 20, 1963; is that right?

A. I thought he was referring to 4(a).

Mr. Dodds: I was going to correct that. I only asked with respect to paragraph 4(a).

937 The Court: Well, the witness has already—

Mr. McConnell: All right. 4(a).

The Court: All right.

By Mr. McConnell:

Q. All right. I show you a document which is attached to a letter signed by Mr. Ruestow to Mr. Crotty of the Zenith Radio Corporation, and ask you if that attachment there to that letter is the same document that was sent to us on March 20, 1963?

A. I believe it is.

Mr. Dodds: Mr. Westerman, could you speak up a little louder.

By the Witness:

A. I believe it is.

By Mr. McConnell:

Q. Well, can't you make it any stronger than that?

A. Well, I'm sure it is. I didn't look at it in your hands.

Q. All right. Now, that document, at least in the form of an offer, was given to Zenith Radio and remained in
938 their possession up until the time they filed their counter-claim; isn't that true?

A. I understand so.

Q. Now, you say you are a lawyer?

A. Yes.

Q. I read this statement to you, which your Counsel examined you on:

> "(a) Until June 30, 1966, all licenses covering both patents and patent applications for use in both color and monochrome television receivers shall be subject to an overall maximum of $200,000."

What in that statement is ambiguous?

A. I believe it could be taken to mean either that the $200,000 maximum could be available on any license, or it could be taken to mean that it would be available if an entire package were taken.

Q. And you say it shall be subject to an overall maximum of $200,000. That to you as a lawyer is an ambiguous statement; is that right?

939 A. Not the words "an overall maximum." That means that the royalty paid by the licensee overall would not exceed $200,000.

Q. On everything, doesn't it? Wouldn't that mean that to anybody that reads the English language?

A. On everything subject to the license. I believe the misunderstanding can come from the earlier part of the clause.

Q. All right. But the $200,000 maximum came from the RCA arrangement, didn't it?

A. The RCA and the Sylvania arrangements.

Q. Which ran until when?

A. RCA until June 30, 1966. I'm not sure—the Sylvania may have run a little longer; I'm not sure of it.

Q. Well, at least until June 30, 1966, all of these licenses were going to be an overall maximum of $200,000 because you had that arrangement with RCA; isn't that true?

A. That's true, yes.

940 Q. Now, your arrangement with RCA wasn't ambiguous at all, was it?

A. No, sir.

Q. It covered everything they had in color or monochrome, didn't it?

A. That's right.

Q. For $200,000?

A. That's right.

Q. And that's what you are referring to here.

A. Yes.

941 Q. Now, when you were looking over this thing the other night, after you had read Mr. Crotty's testimony, you saw that you were offering individual patents with maximum whose aggregate was more than this overall maximum, didn't you?

A. That's correct.

Q. That's what bothered you, wasn't it?

A. Yes. I didn't read Mr. Crotty's testimony. I just heard it.

Q. You heard it. But that's what bothered you when you got thinking about it at night, wasn't it?

A. I wanted to look at this for that reason, yes.

Q. And that was a misuse defense, and you knew it, didn't you?

A. I believe—

Q. You as a lawyer know that is a misuse defense, don't you?

A. I believe it might be misuse, if we forced a package by offering a $200,000 maximum which was substantially lower than the total of the aggregate patents.

942 Q. That's right. So you are trying to tell this court that isn't what you intended; is that it?

A. I am not aware of any intention at the time of drafting this document to accomplish that.

Q. I didn't ask you that. I ask you whether in this testimony you have been giving here about intent, your purpose wasn't to persuade this court that your intent wasn't what your document says—to offer a maximum on a package which was less than the aggregate of two or three patents.

A. I believe I have testified that the intent was not to force the taking on a package.

Q. That's what you are trying to persuade this court, isn't it?

A. Yes.

Mr. McConnell: Pardon me while I sit down a moment, your Honor:

The Court: You may interrogate from there, if you choose, Mr. McConnell.

Mr. McConnell: No, it isn't necessary to do that. I 943 just want to go through this document.

By Mr. McConnell:

Q. Mr. Ruestow was advising you legally, or the members of your company, the officials of your company, on what he thought was misuse, wasn't he?

A. Yes, sir.

Q. And he was writing memoranda from time to time?

A. Yes, sir.

Q. Did you see his memoranda?

A. I saw some of his memoranda.

Q. You have seen them all, haven't you?

A. I have now seen all—

Q. You have now seen all of them?

A. Yes.

Q. I call your attention to his note and comment in Defendant's Exhibit No. 27, in which he discusses the package license and the larger amounts of individual licenses. And under five, he makes this comment which I call to your attention.

944 Mr. Dodds: Exhibit 7 is a letter to myself from Mr. Binns—

Mr. McConnell: 27, I said.

The Court: Let him find it.

By Mr. McConnell:

Q. Here is his comment:

"So what have we gained for the risk of misuse charge. The whole thing is still apt to be viewed for just what is intended—a transparent attempt to force them into a package."

Now, is Mr. Ruestow missating your intent?

A. I don't know what document he is referring to her.

Q. I didn't ask you that. Read the question to the witness.

Mr. Dodds: Your Honor, I object to that. Mr. McConnell has been quizzing the witness about his intent on the Exhibit, Defendant's Exhibit 15. The witness says he doesn't know whether these comments refer to that or not.

945 The Court: I think it is a fair response. I sustain your objection.

If you want to pin him down to this or to something else —I don't know what Mr. Ruestow was looking at when he wrote the memo.

By Mr. McConnell:

Q. All right. I will read the first comment, the one preceding that—and I take it you have read these; you are familiar with these notes; is that right?

A. I believe I have, yes.

Q. (Reading.)

"Questionable that it baits them to take the whole package."

Now, that's what you were afraid of in this document, isn't it, when you realized the effect of it here in court, that offering the package at a lower rate, the whole package, with everything in it at a lower rate than the aggregate maximums of two or three patents was subject to the interpretation that that baited us into taking the entire package; isn't that correct?

946 A. I would be concerned about the language that we were just speaking about in Exhibit 15, I believe, if the effect was to—in effect a refusal to offer less than the total package. I would be concerned about it.

947 Q. You would be concerned about it because it baited us into taking the entire package through economic necessity; isn't that true?

A. If it had that effect, yes.

Q. Yes.

The Court: Can somebody, for the purpose of my benefit, give me the date of Mr. Ruestow's comments. Do you have that?

Mr. McConnell: Yes, I can give you that.

The Court: I mean, that might help me determine whether he is talking about a document from 1955 or—

Mr. Dodds: This document, your Honor, isn't dated. I don't believe anybody can give the date, unless it is Mr. Ruestow.

Mr. McConnell: I guess we can't give you the date, your

Honor. I would like to—we do have this testimony that he did talk about this with the officials of the company.

Mr. Dodds: Yes. But there is no testimony whatever relating this document to Exhibit DX 15.

948 The Court: I guess the best you can do, under the circumstances, is to determine whether or not—

Mr. Dodds: Your Honor, we are going to put Mr. Ruestow on the stand, and he will clarify this and will identify these notes and to what he was referring when he wrote—there is a series of these notes, as you may recall, from the plaintiff's briefs.

Mr. McConnell: That's all right. I just want to cross examine this witness. He says his intent is something entirely different from this. Mr. Ruestow doesn't agree with that.

Mr. Dodds: That's not true, Mr. McConnell. Mr. Ruestow so far, on the record, hasn't made any comment on Defendant's Exhibit 15.

The Court: Well, let me ask this question, since it doesn't occur to anybody else.

If his comments in regard to this offer was based on 949 this offer, would you say that that is a fair comment?

If his comment is based upon this—what is it, document 15—

Mr. Dodds: Exhibit 15, the March 20th offer.

The Court: Would you say that that—

The Witness: I would say it would be fair if—

The Court: Other than the use of the word "bait" and that sort of thing. I mean the purport of it.

The Witness: I believe that we should not force—

The Court: Well, I think we have solved that one, maybe. Now, it is just a question as to when he made the comment.

Mr. McConnell: Well, his comment is here:

"So what have we gained for the risk of misuse charge."

The Court: Well, I assume that this witness adopts that too.

950 Mr. McConnell: (Reading.)

"The whole thing is still apt to be viewed for just what we intended—a transparent attempt to force them into package."

By Mr. McConnell:

Q. Now, the "we intended" means your organization, doesn't it?

A. Well, your Honor, I don't accept that interpretation or comment on the document.

Q. I know. You have been telling us that your intent is something different.

Mr. Dodds: Your Honor, I request that Mr. McConnell stop misconstruing and distorting the witness' word. He says he has no way of tying in this document about which he is being examined, Defendant's Exhibit 15, the March 20th offer.

The Court: I'm aware of that.

Mr. Dodds: And Mr. McConnell keeps trying to shift back and refer everything in this—the witness' comments to Exhibit 15. So far, there is no relationship.

951 The Court: I thought I had an answer to a question that if his comment was in regard to Exhibit 15, would he consider that a fair comment.

The Witness: Your Honor, then I would want to say no, because I think the language I have referred to in Exhibit 15 was mistaken.

The Court: All right. Then that is your new answer. That is your new answer. All right.

If you didn't understand the question before and you want to change your answer, you of course have a right to straighten out the record.

The Witness: Yes, sir.

By Mr. McConnell:

Q. Now, do you recall that there was a proposal at one time, which the court referred to awhile ago, of fifty per cent for one license, for one patent, eighty per cent for two, and one hundred per cent for three or more?

A. I have heard that, yes.

952 Q. Well, will you go along with me that there was such a proposal at one time?

A. Yes, sir.

The Court: Would anybody care to place that in point of time?

Mr. Dodds: Your Honor, I believe that went back many years, back to about 1958 or '9, I believe. And I believe it was only with respect to monochrome, where there were only a few applicable patents.

The Court: All right. Fine. That solves that one.

Mr. McConnell: It doesn't solve it to my satisfaction, your Honor, because—

The Court: I mean, it answers my question. If you can get a different answer, why, fine.

Mr. McConnell: We had Mr. Crotty testifying about that. He testified it was being offered to him shortly before this controversy arose, after these patents expired.

The Court: Well, that would be '58 or '59, wouldn't it, which is what Mr. Dodds said.

953 Mr. McConnell: Well, I confess I haven't got the date in mind.

The Court: All right.

Mr. McConnell: I guess we are talking about something we can clear up.

The Court: Good.

Mr. McConnell: Well, anyway, I would judge from these comments that it was after the controversy with Zenith that this memoranda was written—

The Court: You can argue that, but it would be better if you had some evidence to support the argument.

Mr. McConnell: Well, I'm going to read it right now.

The Court: Go ahead.

Mr. McConnell: This memorandum:

"Problem was to make it attractive to take package so there would be no suits—without misuse.

"Misuse is still with us and Zenith will hang us.

"Loew affirms Securit."

Mr. Dodds: Which document are you referring to,
854 Mr. McConnell?

Mr. McConnell: I haven't left the one document at any time. I was reading from Defendant's Exhibit No. 27. And he says he is familiar with it; he has read it; he has seen it.

Mr. Dodds: I might say, your Honor, there has been some confusion introduced, because there are two entirely separate memos of different dates which have been clipped together as Exhibit 27. So you would have to know which one he is talking about for reference.

The Court: Of course, what confuses me is a few minutes ago you told me there weren't any dates on any of them.

Mr. Dodds: No dates. But I say they refer to different events.

The Court: I don't know how you know that there are different dates as you indicate.

Mr. McConnell: Well, what I indicated, your Honor, was that this has to refer to a time after the controversy with Zenith.

The Court: I would say that there is circumstantial
955 evidence that you can draw an inference from, which is better than what we had before, which was nothing.

Mr. McConnell: Well, you see, it refers to the misuse in Zenith.

The Court: I understand what you are talking about, and I think maybe you agree that that is more than you had when you read that.

Mr. McConnell: I think so.

The Court: All right.

By Mr. McConnell:

Q. Now, his comment is that where the individual patent —and I am paraphrasing here, but you can correct me if I am wrong—where the individual patents are offered at an aggregate maximum over the package maximum, his comment is this:

"Economic blackmail toward package no matter how you slice it."

Do you agree with that or not?

A. I don't know what he is referring to, but I—

Q. Well, I gave you—assuming my analysis and
956 paraphrasing of it was correct, I told you what he was talking about, which was where the aggregate of the individual patents and a small number of them less than the package reaches a larger amount than the maximum under the whole package, whether or not his comment—"Economic blackmail toward package no matter how you slice it"—is one that you agree with—

Mr. Dodds: Your Honor, I object. That is a hypothetical statement, unless this statement is related to some particular proposal.

Mr. McConnell: No. I am talking about his intent. Now, he is trying to tell your Honor that—

Mr. Dodds: Intent with respect to what?

Mr. McConnell: He intended something that didn't appear from this document.

Mr. Dodds: He has referred to intent only with respect to Exhibit 15. There has been nothing to tie up any of these comments with Exhibit 15.

Mr. McConnell: I don't have to tie it up with Exhibit

15. I am cross-examining him on his intent, what he
957 knew about this—.

The Court: I think the witness has already indicated on another occasion, and perhaps with regard to this frivolity, that Mr. Ruestow's language is more picturesque than the language this witness uses in regard to this situation. And he has refused to adopt his picturesque language in regard to other matters and prefers perhaps not to do it at this time.

958 By Mr. McConnell:

Q. All right. On this proposal that was sent to Zenith under date of March 20th, 1963—

Mr. Dodds: That's 15.

By Mr. McConnell.

Q. You had an over-all maximum at that time, including everything that you had in color or monochrome, of $200,000; isn't that correct?

A. Yes.

Q. Now, on this Exhibit 15 you had a table which set forth the sum of percentage rates for individual patents elected. And the total of all of these patents, if you took the individual maximums, reached $305,000, didn't it?

A. I don't follow that. Is that with the supplement of May 20th?

Q. Yes. This is the table.

Mr. Dodds: That's not the March 20th letter, though. That is the May 20th letter.

Mr. McConnell: This is May 20th.

The Court: Well, this is a new document. Let's get the record straight.

Mr. McConnell: All right. I am talking now about
959 Exhibit—Defendant's Exhibit No. 16.

The Court: All right.

The Witness: Yes.

By Mr. McConnell:

Q. Well, now, at that time your maximum was still going to be $200,000. That was going to be the maximum until June of 1966, wasn't it?

A. That's correct.

Q. So that your maximum was $200,000, but the aggregate of the individual maximums in this package was $305,000; isn't that right?

A. That's right, yes.

Q. And you could pick two patents out of this package which would aggregate more than $200,000, couldn't you?

A. Yes.

Q. So that there was an economic coercion to take the package up as far as May 20th, 1963, wasn't there?

A. If that paragraph that I referred to as being mistaken was enforced, as a means—if that was offered only as an offer for an entire package, and it were enforced, you are right, yes.

960 Q. Well, you said in your prior letter that it was open until June of 1963, didn't you?

A. Yes. But I believe it was a mistake.

Q. Oh, it was a mistake?

A. Yes.

Q. You never wrote Zenith and told them it was a mistake, did you?

A. It never occurred to me until last night.

Q. Well, did you or didn't you?

A. No.

Q. I show you a document which is marked in evidence here as Defendant's Exhibit 22, under date of February 8, 1963. Did you prepare this document?

A. I did; yes, sir.

Q. On the bottom of Page 1, you state:

"All patents other than the two basic ones called 'insignificant patents' would be offered only as the

monochrome B package. An attempt is to be made not to license them at all. However, if it becomes necessary to license them because an applicant for the basic
961 patents would not take them without such assurance against Hazeltine infringement, then the insignificant patent package would have to be available to any responsible manufacturer."

What do you mean by the insignificant package?

A. That would be the package of patents other than those considered to be valuable in television by our engineers and patent department.

962 Q. They were still patents on which they needed insurance value, is that it?

A. No, the idea there was that if a prospective licensee wanted all of the patents, they would—we would make them available.

Q. Well, you say:

"It became necessary to license them because an applicant for the basic patents would not take them without such insurance against Hazeltine infringement."

A. Because it was my understanding that some prospective licensees, if they took a license at all, would want to be covered by all Hazeltine patents present and future during the term of the license.

Q. In other words, somebody that didn't know what you knew, that they were insignificant, thought that they had some significance, but really they didn't, is that it?

A. No.

The Court: You would consider those radio patents on which you hadn't charged royalties since 1955 insignificant patents?

963 The Witness: I don't know, your Honor, whether any of those patents are also included in this group.

The Court: But, I mean, if you hadn't charged royalties on them since 1955 they could fairly be called insignificant, couldn't they?

The Witness: Yes.

The Court: And would they be thrown into this package deal?

The Witness: I am not sure about that. What I believe that this would be any Hazeltine patents in its entire inventory that might have any value in television.

The Court: All right.

By Mr. McConnell:

Q. Then you say:

"In addition, if for reasons peculiar to his own requirements, a particular licensee desired any one or more but not all of this package of insignificant patents they would be offered to him, assuming that we had already been obligated to license any of them
964 as indicated above. But the rates for each patent would then be a custom-made rate based and negotiated on his particular requirements (on the basis that in an over-all industry sense the patents are virtually worthless separately)."

It wouldn't mean that they are worthless separately but they are worth a lot more when they are in a package.

A. What I mean there is that in the sense of contributing to performance or to cost savings in a television—

Q. Don't you mean this, really, that you couldn't license the individual patents alone, but if they borrowed some strength from some of your other portfolio you might get a license for them; isn't that what you mean?

A. I did not mean that.

Q. You don't mean that?

A. No.

Q. That isn't what that language means?

A. No, sir.

965 Q. Then you say:

"It would be contemplated that if the package of insignificant patents is taken by a licensee of one of the basic patents for insurance purposes—"

What do you mean by that, so he won't get sued?

A. Yes, if a prospective—

Q. So you wouldn't sue him on those insignificant patents, is that it?

A. If a prospective licensee wanted to take all the patents for insurance or other purposes, we would make them available.

Mr. McConnell: That is all.

The Court: Anything further, Mr. Dodds?

Redirect Examination by Mr. Dodds.

Q. Mr. Westermann, still referring to Exhibit 15, as modified by Exhibit 16, the March 20th letter as modified by the May 20th letter, you have referred to Sylvania; did Sylvania have an overall maximum $200,000 clause attached to its license agreement?

966 A. Yes, sir.

Q. Did it have a package license in monochrome television receivers?

A. No, sir. The $200,000 was in a side letter.

Q. Well, it formed a part of the license agreement, did it not?

A. Yes.

Q. Was it the natural operation of those letters or of any Hazeltine plan that the $200,000 maximum operate concurrently with these other royalties coming to a higher figure or did they operate in sequence?

A. The $200,000 would be the maximum that would—

the other maximum would not apply until June 30, 1966, if I understand your question.

Q. So they were effective in sequence rather than simultaneously?

A. Yes.

Q. When did you first see Mr. Ruestow's memos of Exhibits 24, 27 and 30?

A. These handwritten notes I saw several weeks ago when Mr. Ruestow handed me a folder which he said
967 contained copies of the documents obtained by Zenith on the discovery proceedings.

Q. Was that the first time that you saw them?

A. The handwritten notes, yes.

Q. Or any copies of them?

A. That is right.

Mr. Dodds: That is all.

The Court: All right, thank you.

Mr. McConnell: I have no further questions, your Honor.

The Court: What?

Mr. McConnell: I have no further questions, your Honor.

The Court: That is all then.

(Witness was excused.)

Mr. Dodds: I would like to call Mr. Ruestow.

The Court: I think he has been sworn.

Mr. Ruestow: I have been sworn.

968 EDWARD A. RUESTOW, witness called on behalf of the plaintiff and counter-defendant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Ruestow, will you refer to Exhibit DX 24, comprising a series of your notes, and I ask you whether in writing those notes that those notes were made with reference to any particular document?

A. I think I testified earlier that they were made with reference to the memo that I sent to Mr. Wilson—pardon me, with reference to your memo to Mr. Wilson back in—

Q. Was that Exhibit 3? You might check Exhibit 3 and see if that is the document to which you refer?

A. Yes.

969 Q. Do you know what disposition was made—

The Court: Can you give me the date on Mr. Wilson's thing, whatever that is?

The Witness: That is December 14th, 1961, your Honor, and my notes would have been a few days after that.

The Court: All right.

By Mr. Dodds:

Q. Do you know what disposition was made of the recommendations in that memorandum of Defendant's Exhibit 3?

A. Yes, I do.

Q. What were they?

A. They were abandoned. I had a conference with Mr. Wilson and Mr. LaFollette concerning my ideas as expressed in Exhibit 24 and those of your memorandum, Defendant's Exhibit 3, were abandoned because they agreed with me, and from there on I was authorized to begin to formulate a new plan.

Q. Now, will you refer to Exhibit 27, and particularly Pages 1 and 2, and will you review your notes there and tell the Court to what document or proposal or arrangement those notes refer?

970 A. They refer—

Mr. McConnell: What document have we got now, 27, is it?

The Court: 27.

Mr. Dodds: Pages 1 and 2 only.

The Court: Those also were handwritten notes, is that right?

The Witness: That is right. We are on Exhibit 27.

By Mr. Dodds:

Q. The first two pages only.

The Court: What is the pending question?

Mr. Dodds: I asked him to what document or proposal, if any, those notes referred. These notes comprise some critical comments.

The Court: I understand.

By the Witness:

A. There was confusion in the copying so I must check these carefully. The first two pages—well, with reference to—

Mr. McConnell: What is the witness referring to, if I may ask.

The Witness: Exhibit 27.

971 Mr. Dodds: Exhibit 27, the first two pages.

The Court: He is reading from something else.

Mr. McConnell: He is reading from something else.

The Witness: These are my personal notes made in the hotel to keep in mind what these exhibits were all about.

Mr. McConnell: Well, I object to the witness testifying

from notes. He has not exhausted his recollection or anything.

The Court: Your objection is sustained. Put the notes away until such time as they become necessary to refresh your recollection.

The Witness: Very well.

By the Witness:

A. Are you asking me about the first two pages of Exhibit 27?

By Mr. Dodds:

Q. Right.

A. These refer to a proposal that you had made about January of 1963.

Q. Would you refer to Exhibit 34-A and see if there is any relationship between that exhibit and the 972 memorandum of mine to which you referred.

A. 34-A?

Yes, 34-A is the proposal that I had in mind, because 34-A is a memorandum of yours to Mr. MacFarland.

973 Q. Under what date?

A. Dated January 24, 1963.

Q. And what disposition, if you know, was made of the recommendations contained in that Exhibit 34-A?

A. They were abandoned.

Q. Now, will you refer to pages three and four of Exhibit 27, and I ask you to what proposal or documents, if any, those two pages relate?

A. Pages three and four? Do you mean—

Q. Of Exhibit 27. If you look—look at the photostat copies. The four pages were all clipped together as 27.

A. All right.

Q. I believe in your original longhand notes they were two separate documents.

A. I see. Yes. Now, what was the question?

Q. The question was, with respect to pages three and four of Exhibit 7, to what document or proposal, if any, do pages three and four of that Exhibit refer?

A. I think you meant to say 27.

Q. Exhibit 27, pages three and four.

974 A. They refer to the same proposal that you have made in Defendant's Exhibit 34-A.

Mr. McConnell: Now I object to cross-examining his own witness.

The Court: The objection is sustained to Counsel testifying.

Mr. Dodds: All right.

By Mr. Dodds:

Q. Will you refer to Exhibit 30, Mr. Ruestow, and that is your longhand notes of March 10, 1963.

A. Yes.

Q. And will you state to what, if any, proposal or document those notes refer to?

A. Those referred to some preliminary drafts which preceded the letter sent out May 20th—I think March 20th, at least the document that was referred to—

The Court: March 20th of 1963?

The Witness: March 20th of 1963.

975 By Mr. Dodds:

Q. As Exhibit 15. Will you check and see if that is Exhibit 15?

A. Yes.

Q. To your knowledge, had any concern signed a license including the schedule royalty rates of Exhibit 15 prior to the memorandum of May 20, 1963, Exhibit 16?

A. No one had signed it.

Q. Mr. Ruestow, did you, at any time, have any concern about whether or not the license agreement form 918 pre-

sented a problem of misuse when applied to color? And that is Exhibit 2 in the binder, in case you want to refer to it.

Mr. McConnell: I object to whether this witness had any concern about it. I don't see how that defenses this thing.

The Court: Well, we have heard about his concern about other documents, Mr. McConnell. We will see if he had any concern about this one.

The objection is overruled.

976 By the Witness:

A. Am I to answer?

By Mr. Dodds:

Q. Yes.

A. I believe I testified earlier that I had no concern about this agreement 918 as such.

I believe I indicated that it presented to me some problems that I thought had to be solved and could not be solved by this instrument.

977 Q. Were those problems primarily legal problems or economic problems or both?

A. It was a combination of both, but mainly economic.

Q. At any time, did you or your associates reach a decision not to offer licenses under form 918 any longer?

A. Yes.

Q. When did you reach that decision?

A. Shortly after the memorandum that I wrote to Mr. Wilson to which we referred earlier; I have forgotten the Exhibit number.

Q. Would you refer to Exhibit 23 and see if that is the document which you had in mind?

A. Yes.

Q. And you say your decision not to use form 918 any more—was that approved or disapproved by Mr. Wilson?

A. It was approved. I urged upon him that we should no longer use 19.

The Court: 918, you mean.

The Witness: Yes, 918, and he approved my recommendation.

978 By Mr. Dodds:

Q. Did you ever offer Mr. Crotty or the Zenith Radio Corporation a license in the form of 918?

A. No.

Mr. McConnell: I move to strike that. I didn't have a chance to get an objection out, but that is going to be a conclusion, I think, that the court will have to determine from the testimony.

The Court: Well, that testimony will be his denial plus whatever else there is.

The objection is overruled.

By Mr. Dodds:

Q. Mr. Ruestow, I would like to refer you to page twenty-one of the Defendant-plaintiff's brief in which they quote a portion from your report to the Board of Directors of April 17, 1963, which is Exhibit DX 31, which you might want to refer to.

A. 21, did you say?

Q. 31.

A. Yes, I have it.

979 Q. Do you find that in the portion quoted in Zenith's trial brief?

A. You mean this portion quoted at the top of page twenty-one?

Q. Yes.

A. Yes, I find it here.

Q. Now, that statement in your report to the Board of Directors of Hazeltine Corporation, will you state whether that represented an analysis of your views or an analysis of Zenith's charges or something else?

A. An analysis of Zenith's charges.

Q. Now, Mr. Ruestow, there has been some repeated reference to the Hazeltine "standard" license agreement; do you have any statement with respect to whether there is or is not such a "standard" agreement?

Mr. McConnell: I object to that as calling for a conclusion of the witness, whether or not there is a "standard" agreement. The court will determine that from the facts in this case.

980 Mr. Dodds: This is utter nonsense.

The Court: That term appears throughout the trial from various witnesses. I think what you are asking now, based on your question, is, is there as of this moment a "standard" agreement, and you haven't asked him if there ever was. The objection is sustained to the form of the question. Whether there is or is not now does not make a great deal of difference.

By Mr. Dodds:

Q. Would you answer the question, Mr. Ruestow?

The Court: I sustained the objection to the form of the question. You put it in the present tense as to whether there is one now and that is why I sustained the objection.

Mr. McConnell: Well, I object to that, if the court please, because Mr. Dodds has been very meticulous in limiting me up to the time of this counter-claim.

Mr. Dodds: I was going to amend it, your Honor,
981 myself. I was going to limit it to the period of March to May 1963, whether at that time there was anything that could be termed a "standard" license agreement.

The Court: Well, I think he ought to tell us what agreement, if any, was available, and then perhaps the court ought to decide if that is what could be called a "standard" agreement.

Mr. Dodds: All right.

982 By Mr. Dodds:

Q. It is your understanding, Mr. Ruestow, that the term "standard" with reference to "agreement" has been used to refer to the document form 918, Exhibit 2—you might like to refer to the agreement.

A. That is the way I understand it. I have read the word a number of times.

The Court: That is what you assumed was being talked about when that phrase was used, is that it, "standard agreement"?

The Witness: Certainly when I have been on the stand before, yes.

The Court: All right.

By Mr. Dodds:

Q. Tell me, were license agreements issued by Hazeltine ordinarily in the form of a printed document like that alone, or were they in the form of a printed document with a number of amendatory letters?

Mr. McConnell: Well, I will object to this. If we are going to get into what licenses they have issued and the terms of them, I think we are entitled to have the

983 copies out of their files as to what they are.

Mr. Dodds: They have had all of those copies, your Honor.

Mr. McConnell: I know, but I object to your characterizing what they are with the oral testimony of a witness.

Mr. Dodds: These are documents and I am going to put them in evidence and show what they are.

The Court: I sustained the objection to the form of the question and I suggest that perhaps you have him identify these on Monday morning.

Mr. Dodds: All right, sir.

The Court: And prefacing my remarks this way, that I personally don't care when you get through with this law-

suit, but maybe those standing in line behind you do, are you in a position to give me a suggestion and not a commitment as to when it might conclude.

Mr. Dodds: I would expect to be through some time Monday, your Honor, with the counter-defendant's
984 case. I don't know about rebuttal.

Mr. McConnell: Well, I don't think there will be any more than a half a day of rebuttal at the most.

The Court: Am I going to be rewarded with a forensic display here at the conclusion of the—

Mr. McConnell: Well, I was going to suggest that—I know that your Honor is not very anxious to listen to lawyers in forensic displays.

The Court: I have never listened to you and I think that is a privilege that I should no longer deprive myself of, Mr. McConnell.

Mr. McConnell: I am perfectly willing to meet your Honor's suggestion.

The Court: That doesn't excuse you from writing a post-trial brief.

Maybe Mr. Curtis can just take the record and say that this is the post-trial brief of Mr. McConnell's.

Mr. Dodds: May I offer a suggestion, your Honor?

The Court: Yes.

985 Mr. Dodds: At least from Hazeltine's point of view, I think that the most satisfactory way would be to file post-trial briefs with exhibits which your Honor has not had the benefit of and then to have a final argument if you wish it after the briefs are in.

The Court: Well, while the evidence is fresh in my mind, I would like to, perhaps, hear something in regard to each of your theories as to what the evidence shows in regard to the question of conspiracy.

Mr. McConnell: I will be ready to argue.

The Court: I mean the proof of the conspiracy.

Mr. Dodds: Well, actually, your Honor, I think our pretrial did that. At the conclusion of the trial it will not be possible, I believe, immediately after the trial, to give transcript references to the testimony.

The Court: I understand that and I anticipate that—

986 Mr. Dodds: But I think our pretrial brief has stated our position fully. It is very simple. There is nothing but contractual relationships. I don't know that that could really be amplified very much. Your Honor hasn't had an opportunity of examining the documents themselves up to this time.

The Court: Unless you feel that some of the evidence is not what you anticipated it would be at the time you wrote the pretrial brief. I don't know what your feeling is in regard to that.

Well, we will go into that Monday.

I would say that I could safely tell those that follow that they might proceed at least by Wednesday morning of next week and possibly by Tuesday.

Mr. McConnell: Well, it has always been my experience, for what it is worth, that while the evidence is fresh in all of our minds, that a great deal of benefit can be gotten out of an oral argument, not only in the statement, but—

987 Mr. Dodds: Excuse me, could Mr. Ruestow be excused? He has to catch a train.

The Court: Yes.

The Witness: Thank you, your Honor.

Mr. McConnell: Questions that might be asked that are in the Court's mind could—

The Court: Well, it might be that at that time I could propound some questions and indicate to you what is bothering the Court at the time, which might help you in preparing your post-trial briefs.

Mr. Dodds: I think that would be very helpful, your Honor.

Mr. McConnell: I would appreciate an oral argument.

The Court: Well, then, I feel safe to say that you won't be here Wednesday.

Mr. McConnell: I think not, your Honor.

The Court: Which is cutting a three-week trial down pretty good.

Mr. McConnell: Although I think that if we are going to have any oral argument that I would want about an hour and a half.

988 The Court: I am not going to limit you. All right.

(Thereupon an adjournment was taken to 10:00 a.m., on Monday, February 24, 1964.)

989 (Caption—59-C-1847)

Before the Hon. Richard B. Austin,
Monday, February 24, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow.
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

990 The Clerk: Case on trial.

EDWARD A. RUESTOW, called as a witness on behalf of the plaintiff and counter-defendant, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Dodds (Continued).

Q. Mr. Ruestow, I believe at the close of your testimony we were discussing the Form 918 license, Exhibit 2, which has been referred to as the so-called "standard" license, and I should like to ask you whether in your experience you found that that license was generally issued to licensees alone or with amendatory side letters.

A. Oh, yes. In the great majority of the cases it was issued with various side letters.

Q. I show you several documents which I hereby identify as Plaintiff's Exhibits 52 through 55 for identification and ask you if you can identify those.

A. Yes.

Q. What are they?

991 A. They are correspondence between the plaintiff Hazeltine Research, Inc., and the Magnavox Company of Tennessee, and they were letters in connection with the 918 agreement.

Q. Would you look them over and just state briefly the subject matter to which those amendatory letters relate.

Mr. McConnell: Well, I object to that, if the Court please. The documents are the best evidence of what they state, what they relate.

The Court: That is true, but it may be that some part of these documents are of no consequence, and if there is something in here that Mr. Dodds wants to call my attention to, I am going to let this witness call my attention to it regardless of the fact that the document does speak for itself.

Mr. Dodds: It was no intention to modify the document, your Honor, it is just a question of briefing you without having it read through this. It is just generally the subject matter to which they relate.

The Court: This is sort of an abstract.

992 Mr. Dodds: Just an abstract.

The Witness: Shall I proceed?

The Court: Yes. The objection is overruled.

By the Witness:

A. The first page, which is Exhibit 52, has to do with the limitation of the 918 agreement previously issued to Magnavox, limiting it to the two patents, the Wilson patent and the Loughren patent, L-o-u-g-h-r-e-n.

The Court: That is the patent in suit?

Mr. Dodds: Yes, your Honor.

By the Witness:

A. The second document, Exhibit 53, as I recall, had to do with some accounting problem involving the sales of

sets to distributors, or perhaps it was the fact that there were no distributors in the Magnavox case, something like that. I am not quite sure of the detailed facts.

The third document, Exhibit 54, as I recall, was an amendment of the first document, Exhibit 52, and in this case limited to license to the Loughren patent alone.

The last document, Exhibit 55, again has to do with the problem to which I referred in connection with
993 the Exhibit 53 concerning the sales of sets to distributors.

994 Mr. Dodds: I should like to offer in evidence Plaintiff's Exhibits PL 52 to 55, the documents identified by the witness.

The Court: They may be received.

(The said documents so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS NO. 52 to 55 inclusive.)

By Mr. Dodds:

Q. Mr. Ruestow, are you familiar with the agreements between Hazeltine Corporation and AGA, and Hazeltine Corporation and the General Electric Company Limited of England, pursuant to which Hazeltine Corporation acquired a right to certain of the inventions of those two companies?

A. Yes. I am familiar in a general way with the agreements.

Q. Did you make an investigation of the patents on the inventions which Hazeltine Corporation had acquired pursuant to those agreements?

A. I did.

Q. And did you find among those patents any
995 which, in the opinion of Hazeltine Research, or any of its offices, applied to commercial television or radio receivers?

A. I found none.

Q. To the best of your knowledge, did Hazeltine Research, Inc. ever send out any infringement warning letters with respect to any of the patents in those groups?

A. None was sent out during my period of time with Hazeltine, that I know of.

Q. You have heard Mr. Crotty testify about his discussions with you commencing in the fall of 1961, have you not?

A. Yes.

Q. Did you make any notes contemporaneously with those discussions?

A. Yes.

Q. I show you a document and ask if you can identify it? And this, for the purpose of identification, is Exhibit PL 62. Mr. Curtis was supplied with a copy of that.

Can you identify that document?

996 A. Yes, they are my handwritten notes.

The Court: May I interrupt for just a minute.

Mr. Dodds: Surely.

(The Court gave attention to other matters on the call, after which the following further proceedings were had herein:)

997 The Clerk: Case on trial.

By Mr. Dodds:

Q. Mr. Ruestow, you had just identified Plaintiff's Exhibit 62 for identification; would you just abstract briefly the subject matter of that series of notes?

Mr. McConnell: Well, I will object to his abstracting a series of notes.

The Court: Yes, the objection is sustained. He may—I assume that this is rebuttal testimony to Mr. Crotty, is that right? Is that what it is?

Mr. Dodds: In part, yes. It is partly our affirmative position and it is in part a rebuttal of Mr. Crotty's testimony.

The Court: Yes, but as I understand it, what you are asking for now—these are notes taken at the time of Crotty's conversation with him?

Mr. Dodds: That is right..

I will withdraw the question.

By Mr. Dodds:

Q. Will you please read the notes, Mr. Ruestow. They are not very long.

998 Mr. McConnell: I object to his reading his notes. If he wants to use notes, he has got to exhaust the witness' recollection of what he remembers.

The Court: That is exactly what my ruling was going to be, and your objection is sustained.

When I find out that he no longer remembers that conversation, he may use those notes, if they do refresh his recollection, for that purpose and for that purpose only, but there is no evidence yet that he does not remember it without the notes.

By Mr. Dodds:

Q. All right, Mr. Ruestow, will you tell your recollection of those discussions with Mr. Crotty, referring to Exhibit 62 only to the extent necessary to refresh your recollection as to specific dates or specific statements.

Mr. McConnell: Well, I object. He hasn't exhausted his recollection.

The Court: The objection is sustained. There is no evidence that he does not remember it without looking at a note, Mr. Dodds.

999 Mr. Dodds: Well, I said only to the extent necessary.

The Court: Well, let's find out whether it is necessary at all. Maybe if those are put back on the table he will remember it perfectly. I don't know what kind of recall this witness has.

By Mr. Dodds:

Q. All right, Mr. Ruestow, will you state what you remember of those discussions?

A. These discussions went on over a period of perhaps six months. I recall they started at a luncheon that I had with Mr. Crotty in the early fall of 1961. I recall it because it was a day that I was in this court for a calendar call because Mr. Dodds was away on vacation and I answered the calendar call, or perhaps it was a motion of some kind. I used the opportunity of coming to Chicago to have luncheon with Mr. Crotty to explore whether we could get together on a license agreement in the area of color television.

The Court: Do you remember what year, what month this was?

The Witness: I think I already indicated, your 1000 Honor, that it was the fall of 1961.

The Court: All right.

1001 By the Witness:

A. (Continuing.) and perhaps sometime around August.

Mr. Crotty, at that luncheon, indicated that he wished a license under only patents which he would select. He did not wish a package license, in other words.

I told him that we would certainly work out an agreement to give him whatever he wanted.

I think that is about all that I recall of that conversation.

From there on I went home to think out the problem and made some conclusions of my own, and at a later date we had further conversations.

There was one in Little Neck at my office when he came to study the papers in our files for purposes of discovery in this case; pretty much the same sort of exploratory discussions happened then.

I recall he went over the list of some ten patents that I had identified as having application to the Zenith color television receivers.

1002 He indicated to me that some were not applicable.

I told him at some point in this long series of conversations, many of which were by telephone, that the old form of license agreement, namely, this 918 agreement, was no longer available, because we had decided to abandon it. I had decided to abandon it in my own mind at an early date, perhaps the date of our first conversation here in Chicago, and to recommend it to my superiors, which I did, in the memo to Mr. Wilson referred to earlier in my testimony, and immediately thereafter obtained his approval to junk the 918 form of license agreement and work out—

Mr. McConnell: Is this conversation now or are we talking about what he did with Mr. Wilson? If it is conversation with Mr. Wilson, I object to it.

The Court: Well, I think he indicates that the conversation with Wilson is indicated in that memoranda which is already in evidence, or letter, or whatever it is.

Mr. McConnell: Well, I am not clear whether he is
1003 talking about talk with Mr. Crotty now or whether he is off on some background.

Mr. Dodds: It is very clear that Mr. Ruestow was referring to that only to identify the period of time, the memo Defendant's Exhibit 23, which is dated November 20, 1961.

The Court: And after talking to Wilson, was anything conveyed to Crotty? I suppose that is the way to get back on the track here.

1004 By the Witness:

A. After talking with Wilson, Crotty and I had a series of telephone conversations concerning the papers which

I had offered—had given to him for purposes of discussion. Those were referred to earlier in the testimony.

I recall he objected to it strenuously and said that he would be far better off under the old 918 agreement, and I emphatically said that is no longer available.

Mr. Dodds: I might interject that the document to which the witness refers is Exhibit DX-12, for the record.

By the Witness:

A. (Continuing.) From there on, the discussions were largely by telephone, and they petered out because Mr. Crotty and I could not reach an agreement on—

Mr. McConnell: I object to this. This is not conversation. This is the witness' conclusion of what happened to the conversation— "It petered out."

The Court: I mean, this may be a summary of the 1005 conversation. I don't know. Maybe this is his best recollection, and the time has now come to refresh it. I am taking this as a summary of the conversation. That's all.

By the Witness:

A. (Continuing.) I think that's about all I can say. It's my best recollection as to what happened.

By Mr. Dodds:

Q. Do you recall how long those conversations continued with Mr. Crotty?

A. Oh, up until about May of 1962.

Q. And do you recall what terminated those discussions?

A. Yes.

Q. Will you state what it was?

A. I asked—

Mr. McConnell: I object to him testifying. He can testify to what happened in the conversation. The Court

will conclude what the effect of it is. Now, he is asking him to conclude what happened.

The Court: All right. Now, tell us about the last
1006 conversation you had with Crotty before there weren't any more conversations. Maybe that's the way to get at it.

By the Witness:

A. I recall asking Mr. Crotty to see me in his office in Chicago so that I could discuss with him what I was proposing to do; and that he said there was no use of having any further conversation so long as the prices that I had proposed were as high as I indicated by the document I had given him.

I said I would like to come anyway, and he indicated that there was no use. So that was the end of it.

By Mr. Dodds:

Q. During these conversations with Mr. Crotty, did you ever tell him that in order to get this $200,000 annual maximum which RCA had, that it would be necessary for Zenith to take a package license with respect to monochrome receivers?

A. What was the end of that—just the end of it.

Q. That it would be necessary for Zenith to take
1007 a package license with respect to monochrome receivers.

A. No. I never said any such thing.

Q. Did you state to Mr. Crotty that in order to get the benefit of this $200,000 maximum, that it would be necessary for Zenith to take a package license with respect to color television receivers?

A. No, I did not.

Q. I should like to refer to Exhibit DX-26 which is a memo of yours to Mr. Beam and Mr. MacFarland. Perhaps you would glance through that memorandum.

Do you recall—

Mr. McConnell: Before you go into that, counsel, may I ask: Did you identify those notes so we know in the record what you are talking about?

The Court: I don't think he ever used them to refresh his recollection.

Mr. Dodds: I never used them. And I assume that the Court would sustain an objection to their offer, so I didn't offer them.

The Court: I mean, apparently they weren't neces-
1008 sary. He didn't indicate his recolletion was exhausted. So that's why, had he sat up there and said, "Well, I don't"—well, all right, let's go on.

1009 By Mr. Dodds:

Q. Are you familiar with that memorandum, Mr. Ruestow?

A. Yes. Defendant's Exhibit 26 you are talking about?

Q. Yes. I notice in there a number of references to the weak position, or the weakened position in monochrome. Now, were you referring to a weakened position in an absolute sense or in a relative sense? And if the latter, relative to what?

Mr. McConnell: I object to that question as leading and suggestive.

The Court: No. He has given him about three alternatives to pick out. He didn't tell him which one to choose.

By the Witness:

A. In a relative sense compared to the monochrome position of Hazeltine in earlier years.

By Mr. Dodds:

Q. Well, this weakened position you referred to, were you referring to the weakness of the patents, or to a number of patents, or to something else?

1010 A. A number of the patents.

Mr. Dodds: No more questions.

Cross-Examination by Mr. McConnell.

Q. Starting with last things first, your conversations with Mr. Crotty—and apparently you had conversations about old form 918—did you tell him what form 918 was?

A. No.

Q. You assumed he knew what it was; is that it?

A. I assumed he knew what it was, yes.

Q. And you assumed he knew what it was because you had already given him a copy of it, hadn't you?

A. I testified earlier that it was my recollection I hadn't given it to him.

Q. Well, you also said that you might be mistaken about that, didn't you, on cross-examination?

A. I did.

Q. And you saw in the letter that Mr. Crotty wrote 1011 to you his reference to the fact that you had given him form 918, in that letter, within a few days of your conference; do you recall that?

A. I recall the letter, yes. You showed it to me earlier.

Q. In which he had made the statement he had it. And you read the letter, and you didn't reply to it; isn't that correct?

A. That is correct.

Q. Now, did that form 918 refer to color or did it refer to monochrome?

A. It refers to both.

Q. And you were talking to him at one time, at least, about form 918, weren't you?

A. To the extent I have already indicated, yes, that it was no longer available.

Q. Well, now, when did you tell him it was no longer available?

A. I would say my recollection is that I told him that in about January of 1962.

Q. So that up until that time, at least, it was available; is that right?

A. No. I didn't say that.

1012 Q. Well, you hadn't told him it wasn't available up until that time, had you?

A. No.

Q. I show you this document which is here in evidence as Defendant's Exhibit No. 15, which is a letter under date of March 20, 1963, written to Mr. Crotty by Mr. Ruestow, together with a schedule of license terms for television receivers. Did you write that letter and send it to Mr. Crotty?

A. Yes.

Q. On or about the date it bears?

A. Yes.

Q. Now, were those scheduled patents that are shown in the Exhibit to the letter, with the letter, entitled "Color Television Receivers, Specified Patents for Use in Color Television"? Was that with the letter?

A. Was that with the letter?

Q. Yes, was it with the letter.

A. Yes, yes. I did not—there were so many words there, I wasn't sure what your question was.

That was with the letter, yes. We are talking about

1013 Exhibit 15, Defendant's Exhibit—

Q. Yes. And you have there nine patents and an application which you have given percentage rates on?

A. Yes.

1014 Q. And you have also shown in your letter how much the maximums would be if you took those nine patents, didn't you?

A. There are provisions for maxima.

Q. Well, can't you answer my question?

Read the question to the witness.

A. Yes, read it back.

(Question read.)

By the Witness:

A. Yes, yes.

By Mr. McConnell:

Q. Now, it also had in it this provision, did it not:

"Until June 30th, 1966, all licenses covering both patents and patent applications for use in both color and monochrome television receivers shall be subject to an over-all maximum of $200,000."

A. Yes, it does.

Q. And that is the proposal that Mr. Crotty rejected, wasn't it? You just told us that he wanted no part of that; isn't that right?

A. That is not the document to which I was re-
1015 ferring when Mr. Dodds was examining me.

Q. Well, all right. Did he tell you he didn't want any part of this proposal at any time?

A. To my recollection, no.

Q. So he never rejected this; is that right?

A. I don't know what he did with it.

Q. Well, he didn't reject it to you?

A. No. There was—

Q. Now, what was the document you were referring to that he did reject in your conversation, which you said terminated all your negotiations with Mr. Crotty?

A. It was a document we identified earlier. I can't remember the exhibit number. I recall that—I believe it carries the date January of 1961.

Q. In other words, you said that that terminated all negotiations, his rejection of the one in 1961; is that it?

A. As of that time, yes.

Q. As of that time?

A. Yes.

Q. Well, then, you had negotiations later on, didn't
1016 you?

A. Not that I—I recollect no further negotiations.

Q. Look, you are still offering this on March 20, 1963, aren't you?

A. Yes.

Q. And you say—you never had an answer to that, whether it was rejected or whether it wasn't rejected; isn't that correct?

A. I never had an answer to it.

Q. All right. Now, going back to these documents which counsel took you over, as I understood your testimony, Exhibit No. 24, which was reference to your comments on Mr. Dodds' memorandum to Mr. Wilson—which is Exhibit No. 3; is that correct? Look at the documents and tell us. Don't look at those notes.

A. Exhibit 3? You are talking now about Exhibit 3?

Mr. McConnell: Read the question to the witness, please.

(Question read.)

By the Witness:

A. Yes.

1017 By Mr. McConnell:

Q. Now, can you tell us by looking at those two documents when you made up the notes in your handwriting, you said, which is Defendant's Exhibit No. 24? And would you mind putting those notes away.

A. When did I make up Exhibit 24?

Q. Yes.

A. Or at least the original of it. My very firm recollection is that I made them shortly after December 14, 1961.

1018 Q. Now, what time is that in reference to this talk you had with Mr. Crotty where you said that terminated all your negotiations at that time, you qualified it later?

A. Read that back, please.

(Question read.)

By the Witness:

A. This is earlier.

By Mr. Dodds:

Q. This is earlier?

A. Yes.

Q. How much earlier?

A. Several months.

Q. How many months?

A. I can't tell without reference to the notes that I made.

Q. Now, in your memorandum which you wrote, you say, some time after December 14th, or shortly after December 14, 1961—and, by the way, you just got through telling us you had this talk with Mr. Crotty in 1961, didn't you?

A. Yes.

Q. So that your talk with Crotty had to be before this memorandum, didn't it?

1019 Mr. Dodds: Your Honor, the witness didn't testify to anything of the sort. He testified it was after the draft of March 26, 1962.

Mr. McConnell: I am talking about what you brought out on your—

The Court: I remember what the witness said, but now he is changing his testimony, which I am not responsible for.

Mr. McConnell: I am going to take him back to his original testimony.

By the Witness:

A. Is there a question pending?

By Mr. McConnell:

Q. There certainly is.

Mr. McConnell: Will you read the question to the witness, please.

(Question read.)

By the Witness:

A. I think I have already indicated that my talks with Crotty extended over a period of six months. Some of it was before this Exhibit 24 and some was after.

By Mr. McConnell:

Q. No. Now, listen, Mr. Ruestow, I am referring
1020 to the talk where you said that Mr. Crotty had rejected your proposals and that terminated your negotiations. That is the way that you first told it. On cross you say it terminated them as of that time. Now, when was that?

A. I think I've already answered that.

Q. Was it prior to the time of your memorandum of December 1961?

A. I thought I had already answered that. It was later.

Q. You told us on your direct examination that it was in 1961, didn't you?

A. I think I told you on direct examination the talks began in 1961.

Q. All right, I guess the record will show what you testified to.

But, anyway, as late as 1961, in commenting on Mr. Dodds' proposal—I can't read those copies without glasses.

I want to read this memorandum to you, which you made in December of 1961, referring to Mr. Dodds, under the title "Misuse Law."

You say:

1021 "He is wrong about the threat of Securit. Houston Kenyon, Phil LaFollette agree with me. Many others are worried. For instance, Page and Rathburn. Attorney General's report is out of date. With the new rambunctious Attorney General, R. Kennedy, raising

hell in antitrust matters, GE troubles, common pricing." Then you say:

"My whole case hinges on above two points in which L.B.D. is in error."

L.B.D. is our friend over here, isn't it?

A. That is right.

1022 Mr. Dodds: Your Honor, I object to that on two grounds; in the first place, it is the exact duplication of what Mr. McConnell asked him when he called him as his witness and, secondly, it is not covered by the subject of the cross-examination.

The Court: Overruled.

By Mr. McConnell:

Q. (Reading.)

"I opened the possibility of higher income and got misuse off our backs. I must act now. Zenith is forcing me. I must either give them low rates to avoid misuse or raise the package rates."

Now, as late as December of 1961 Zenith was forcing you, is that right?

A. That is what I wrote.

Q. Well, is that—were you just writing fiction there in this memo?

A. No, I wasn't writing fiction, no.

Q. All right.

So that there was something going on between you
1023 and Zenith as late as December of 1961; will you agree with me on that?

A. Yes.

Q. And you said:

"I must either give them low rates to avoid misuse or raise the package rates."

All right, did you do either of those two things?

A. No.

Q. Now, I call your attention to this comment that you made:

> "If I am forced to stick to the present agreement, Zenith will make me divide 1.35 per cent up among maybe eighty patents."

Were you talking about eighty patents as late as December of 1961?

A. Yes.

Q. And under the present agreement you had to divide 1.35 percent up among eighty patents. Now, what was the present agreement?

A. 918.

Q. 918? So as late as December of 1961 you still 1024 had 918 open for consideration, didn't you?

A. Open for consideration, yes, I was certainly considering it, yes.

Q. Now, you say:

> "Or if I offer the fifty per cent, eighty per cent, a hundred per cent deal, the pick to patents and zingo, we are right back in misuse."

That was your view at the time?

A. Yes.

Q. And you did offer it, didn't you?

A. I did not offer. I testified before.

Q. All right. The record will show you testified to, I assume.

Well, you had a proposal of fifty, eighty and a hundred per cent, didn't you?

A. In the past.

Q. What was that? Tell us what it was.

A. Much earlier—

Q. No, I didn't ask you how earlier it was, I asked you what it was.

A. What was the proposal?

Q. Yes.

1025 A. The proposal was in the area of monochrome television, where we had three patents and only three patents apparently in use in the industry. If a licensee wished to take one of them, he could have it for fifty per cent of the rate, .95 per cent in the 918 agreement; if he took two, he could have it for eighty per cent of that .95 figure; if he took three or more, he got the license for one hundred per cent of the .95 figure.

1026 Q. Well, he took his choice out of a number of patents, didn't he?

A. Three.

Q. Only three were offered to him?

A. Well, let me clarify that.

Q. Well, let me clarify it a little with another question. How many patents did you have in the package which he got if he paid 100 per cent?

A. If he paid 100 per cent?

Q. Yes.

A. I don't remember the number. There were—

Q. Well, your interrogatories say that it is 500, don't they?

A. It is in the hundreds, yes.

Q. Yes. He could pick out under this 50, 80 or 100 per cent any three of those 500, couldn't he?

A. Yes.

Q. All right.

And if he picked out three, he was paying 100 per cent, the same price that he would pay for the 500, isn't that correct?

1027 A. Yes.

Q. Now, you also made some comments on Exhibit

—Defendant's Exhibit 34-A, which purports to be a note sent by Mr. Dodds to Mr. MacFarland, who was then president of your company, and counsel took you over your Exhibit 27 as to what your comments were there, and I show you a document which is attached to this Exhibit 34-A and ask you whether or not—which is marked here as 34-B—and ask you whether or not that is in your handwriting?

A. Yes.

Q. And that is some more comment that you had on 34-A, isn't it?

A. Yes.

Q. All right.

And your comment on—wait, let me ask you this:

What was this proposal of Dodds? It is entitled "A draft of a new HRI license." Was that something Mr. Dodds was proposing to Mr. MacFarland as to be the new form of licensing?

A. Yes, as I understood it.

Q. And this is as late as January 24th, 1963,
1028 right?

A. If that is what the rate on there is, that is correct. I have forgotten the date.

Q. And here is your comment on it:

"Still apt to be viewed for just what we intended a transparent attempt to force them into the package."

Now, who is the "we" you refer to?

A. The group that was working on the problem of drafting a new policy.

1029 Q. All right, now, who were they? Just tell us their names.

A. Mr. MacFarland, Mr. Dodds—

Q. Wait a minute, who is Mr. MacFarland?

A. Mr. MacFarland was then vice chairman and executive vice president of Hazeltine Corporation.

Q. All right. Mr. Dodds?

A. Mr. Dodds.

Q. What was he then?

A. Mr. Dodds was vice president of Hazeltine Corporation.

Q. The other people?

A. Mr. Westermann, myself, Mr. Diggins, and Mr. LaFollette.

Q. Mr. Westermann is the now president of this Hazeltine Company, isn't he?

A. That is correct.

Q. And Mr. LaFollette, who is he? A lawyer?

A. He is a lawyer, yes.

Q. So that is the "we" that you are talking about that intend an attempt to force them into the package?

The Court: Do you want an answer?

1030 Mr. McConnell: Yes. That was all one question, your Honor.

The Witness: Let me hear it back. I am sure—

The Court: I think the question is, is that the "we" that you were talking about, and I don't think you answered that question.

The Witness: That is the "we" we were talking about.

Mr. Diggins: Your Honor, I don't think that question is clear to the witness.

The Court: Well, if the witness doesn't think so, all he has to do is say so.

The Witness: Well, I didn't hear—I wasn't sure—

The Court: We had gone over a bunch of names and finally Mr. McConnell said, after this group of names, the identification of people involved, he said to you, "Is that the 'we' you were referring to?" Now, is your answer to that yes or no?

The Witness: Well, I have already—

Mr. Diggins: The statement in the letter is "We in-

tended'' something, your Honor, and I don't think
1031 it is clear.

The Court: All I know is that he has identified a bunch of people, and the summary question was, ''Is that the 'we' that you were talking about?'' And all I am trying to do is get an answer to that question. Was it or wasn't it? Yes or no?

Mr. McConnell: We got an answer to the question.

The Witness: We got an answer.

The Court: I don't know what he said, but I will read the record and find out.

Mr. McConnell: Well, he said that the ''we'' included these people. That is what he said. He said, ''Yes'' and Mr. Diggins doesn't like the answer, I guess, and I don't blame him.

1032 By Mr. McConnell:

Q. Now, you referred to AGA patents and General Electric Company patents in questioning by Mr. Dodds and said they weren't any good, and so forth; were they included in this package of five hundred and ten patents which you were offering as a package?

A. Yes.

Mr. McConnell: I haven't any further questions of this witness.

The Court: Anything further?

Redirect Examination by Mr. Dodds.

Q. You recall this letter of March 20, '63, comprising a proposal of a license royalty schedule which was sent to Mr. Crotty?

A. Yes.

Mr. Dodds: That is Exhibit 15, for the record.

By Mr. Dodds:

Q. Was that sent to Zenith alone, was it sent to a large number of licensees, non-licensees, or just to whom was that letter sent?

1033 A. It was sent to a large number of licensees and non-licensees, I would say perhaps two dozen.

Q. Now, during this period from November 20, 1961, which is the date of your memo to Mr. Wilson, Exhibit 23, until this proposal of yours to Mr. Crotty of March 20, 1962, which is Exhibit 12, and which Mr. Crotty found unacceptable, during that period, what form of license agreement, if any, with respect to color was generally offered to prospective licensees?

Mr. McConnell: I object to a general question of that kind. We can't try this case on some custom. The question is what—

The Court: Overruled.

By Mr. Dodds:

Q. Would you like the question back?

A. Yes, I would. It was rather complicated. I think I understand it, but I want to make sure.

The Court: First of all, is the premise right that this is March 20 of '62?

Mr. Dodds: Yes, your Honor, Exhibit 12 is dated March 20, '62.

Would you read the question back, please, Mr. Reporter?

1034 (The question was read.)

By the Witness:

A. There were none offered.

By Mr. Dodds:

Q. With respect to this fifty per cent, eighty per cent, one hundred per cent formula for one, two, or three pat-

ents respectively, about which you were interrogated, will you state whether the protection provided by all of the Hazeltine package or group of patents on monochrome receivers was, in your opinion, substantially the same or significantly different from those of the three principal patents on which the formula was based?

A. Oh, very significantly different. I think I tried to indicate that there were only three patents that we found of any substantial use in the industry. The others were just highly speculative as to whether they would ever be used and would ever turn out to be worth anything.

1035 By Mr. Dodds:

Q. Did I understand in the first part of your answer to say there was a significant difference?

A. Yes.

Q. Between the package and the three principal patents?

A. Yes.

Mr. Dodds: No more questions.

Recross-Examination by Mr. McConnell.

Q. When you went out to sell this package, did you tell these people that you were negotiating with that your patents weren't any good; all those 500 patents were no good except three?

A. I didn't tell them they were no good. I told them they were not in use, or I don't know whether I even told them that. I told them that here we had three patents that were the only ones we could see were in use.

Q. Did you tell that to Mr. Crotty?

A. I don't recall.

Q. This Exhibit No. 12, about which you were interrogated says, up at the top of it, that "This is a ten-

1036 tative draft for purposes of negotiation. It is not to be construed as an offer."

Was it an offer?

A. It was not an offer. I have indicated before.

Mr. McConnell: All right. That's all I asked you. I have no more questions.

Mr. Dodds: No more questions.

The Court: Mr. Ruestow, did you say—or if you didn't, is it a fact that after 1955, you didn't charge royalties on radio receiver patents? They had run out or something?

The Witness: I don't believe I testified on that subject, your Honor.

The Court: Have you any knowledge as to whether or not other than in a package deal, that you charge royalties on radio receiver patents?

The Witness: If anyone decided they wanted to use any of our radio patents, we certainly would have made a license available.

The Court: Well, hadn't they about expired by that time, in 1955?

1037 The Witness: I think that is about the story. The important ones—

The Court: Did you ever charge anyone with infringement of a radio patent after 1955? Just radio.

The Witness: In the field of sound radio, or radio apart from television, I think you mean—

The Court: Radio apart from television.

The Witness: No.

The Court: All right.

The Witness: Not to my knowledge.

The Court: All right. I have no further questions.

The Witness: Not to my very best recollection.

The Court: All right. You can step down, I guess.

Mr. Dodds: No more questions.

The Court: All right.

(Witness excused.)

Mr. Dodds: Your Honor, Mr. Wright is here. He was going to be recalled, and he wanted to get away, so I
1038 would like to call Mr. Wright at this time.

The Court: All right.

1039 JOSEPH S. WRIGHT, called as an adverse witness by the plaintiff and counter-defendant, having been previously duly sworn, was examined and testified as follows:

Mr. McConnell: Would you state for the record, Mr. Dodds, how you are calling him.

Mr. Dodds: I am calling Mr. Wright as an adverse witness.

The Court: I assumed so. He has heretofore been sworn.

Direct Examination by Mr. Dodds.

Q. I believe when you were on the stand the other day, you undertook to get some export sales figures by years, 1950 to date, for England, Canada, Australia, and all other countries. Do you have those figures?

A. Mr. Dodds, I have gotten some figures that include all those export countries. I have not had any opportunity to really go over them to familiarize myself with them, but they are here in the courtroom.

1040 Could I have them, Mr. Stevenson.

The Court: We assume that you didn't stay in town to compile them yourself, Mr. Wright, and there is some evidence that you did.

The Witness: Yes. I have the papers here, Mr. Dodds.

By Mr. Dodds:

Q. May I see a copy?

A. Yes, sir.

Q. Is this one copy, or are these different—

A. This is an original, as far as I know.

The Court: Are there any copies there?

Mr. Stevenson: No, there are not, sir.

The Court: All right.

The Witness: I just saw those, I might add, just as court convened.

The Court: I understand that somebody compiled them for you while you were taking care of business out of the city.

By Mr. Dodds:

Q. You say these just go back to 1959?

A. Yes, sir. These were all the figures—I understand Mr. Kaplan and the head of our export division tried
1041 to get figures going back as far as they could by this morning. They went back from 1959, as I understand it, through 1963.

The Court: Which is the period involved in the counter claim.

Mr. Dodds: The question was directed more—not directed within the scope of the counter-claim, but to indicate what was the relative change in exports as between the countries where they said they had difficulties and the countries where there were no patent difficulties. And I thought it would show that—

The Court: I thought the only countries really involved in this counter-claim, at least as far as the proof is concerned, were these three countries of which they claim they had difficulties.

Mr. Dodds: That right, your Honor. But the point was, we wanted to see whether or not there was any significant difference in the growth of their export business in those countries and in the countries where there was no patent difficulties.

1042 The Court: Well, assume there was or wasn't, what difference would that make to this lawsuit?

Mr. Dodds: Then I think there is a very strong inference that their lack of export sales to these countries was not due to the patent licenses, if their rate of growth was substantially the same in those countries as other countries where they had no patent problems.

Mr. McConnell: To get to that sort of a comparison, you would have to show that none of the countries had any restrictions on licensing. And that isn't so at all. We would just have three or four more lawsuits here to try.

The Court: I mean, I got an impression from the pleadings or something, or the briefs, that these three countries aren't the only three countries in which there are patent pools; isn't that true?

Mr. McConnell: That's right.

Mr. Dodds: I think that is true. But I think there
1043 are many countries in which there are none and never have been at all—South American countries, for example.

The Court: Well, I assume they don't have any in Swaziland or in Tanganyika.

Mr. McConnell: That's right; over in Africa, they don't have.

1044 The Witness: Well, Mr. Dodds, these are the figures, so far as I understand it, on our exports to all other countries besides Canada, including Ghana and Swaziland, and all the South American countries, and so forth, going back to 1959.

Now, it may be that they are still working, trying to find figures going back to 1959. I haven't had a chance to sit down and talk with them about that.

Mr. Dodds: Well, the point was, I thought it would be significant to show whether there was any difference in the patents between the countries where there was no patent situation and in those where there was supposedly patent difficulties.

Mr. McConnell: Now, if you get into that sort of a comparison. I am going to object to your evidence, unless you can show there were no pools. Because I'm prepared to show that you are in a pool in Sweden, in Scandinavian countries, in France, in Germany, Spain—

Mr. Dodds: You know that isn't so—

1045 Mr. McConnell: I don't know any such thing. For the purpose of convenience, we have picked out three countries to try this lawsuit on.

Mr. Dodds: Because those are the only countries where there are any pools of any sort.

Mr. McConnell: Now, that isn't so, and you know it isn't so.

The Court: Now, let's not get into this sideline activity. Let's get on with it.

I think they have done mighty well to come up with this.

Mr. Dodds: I would like, your Honor, for you to take these under advisement. Whether we need to offer these in evidence, I don't know.

The Court: All right.

By Mr. Dodds:

Q. Mr. Wright, with respect to your sales of television receivers in Canada, say from 1959 to date, do you know whether those sales are primarily in urban areas or rural areas?

1046 A. Mr. Dodds, I have never seen them broken down that way. I know we sell sets in the highly populated urban areas of Toronto and Montreal. We also sell them in the prairie provinces of the west.

Q. You don't know whether they are preponderantly in one area or the other?

A. No, sir. I can't help you on that at all.

Q. When did Zenith first commence the manufacture of color television receivers?

A. Well, the first manufacture for commercial offering for sale in any quantities was, as I recall it, in the fall of 1961. Of course, we had been making color television receivers going back to 1951, '2 and '3, but not for sale.

Q. I am talking about those offered for sale to the public.

The Court: The fall of '61 is the answer.

By Mr. Dodds:

Q. Now, do you know about how many sets were sold during 1961?

The Court: You mean where?

1047 Mr. Dodds: In the United States.

The Witness: You are talking about Zenith sales now?

Mr. Dodds: Yes.

The Witness: Or the industry sales?

By Mr. Dodds:

Q. No. The Zenith sales of color receivers in 1959, in round numbers—

A. In '61, now?

The Court: As I understand it, they didn't start until the fall of '61.

Mr. Dodds: I'm sorry, your Honor. I misspoke myself. '61.

By the Witness:

A. I would prefer to use rather round numbers, if we could. These statistics on color sales are rather closely guarded.

I would say we sold more than 20,000 in the fall of 1961.

By Mr. Dodds:

Q. Now, at Page 37 of Zenith's pretrial brief, there is an assertion—this assertion is made:

"Through the years Zenith made every effort to
1048 enter the English radio market. On each occasion,
however, the pool threatened and harassed its distributors until they ceased buying Zenith products."

Now, do you know the names of any of those distributors that were "harassed" by the British pool?

A. I don't recall the names of them.

1049 Q. You don't recall the names of any of them?

A. No, sir.

Q. Do you recall what the particulars were? Did they bring infringement suits against them?

A. I recall that in a number of instances, our records show—and I went over those records some years ago—that when the distributors would talk to us about handling our goods over there, and then either went to the pool to find out what the circumstances would be or, they were invariably told that they could get no license to import, that they would be proceeded against—in those instances where they did buy receivers for import into Britain and resale, they were threatened by the pool and told to desist or they would be cited for infringement.

Mr. Dodds: I move to strike the answer in answer to the question, which was whether or not the pool brought any infringement actions against any of the Zenith distributors in England.

The Court: In view of the fact the answer was not
1050 responsive, and you asked the question, you have
the right to strike the unresponsive answer. And it is stricken, and let's have a responsive answer.

The Witness: I'm not sure I understand the question.

The Court: Do you know of any infringement action that was taken by members of the pool—

Mr. Dodds: Against any Zenith distributors.

The Court: Against any Zenith distributors.

By the Witness:

A. Well, there were threats of infringement action, but I know of no actual litigation that was filed.

By Mr. Dodds:

Q. Now, at page 673 of the transcript, your answer to a question of Mr. McConnell was the following:

"Mr. McConnell, at one point GE and RCA and the Telephone Company raised the same point, that it couldn't participate in any license from CRPL that
1051 permitted manufacture in the United States, but as soon as they settled the lawsuit that was all over and done with. They have themselves been importing goods up there from the United States for years, in large quantities."

Now, the question I want to ask, does the Telephone Company make or sell radio or television receivers, to the best of your knowledge?

A. Not in the United States, to my knowledge, I don't know whether their affiliate in Canada, Northern Electric, makes them or not.

Q. Well, do you know whether the Telephone Company has been exploiting radio or television receivers from the United States to Canada?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. In fact, your knowledge is that they haven't, isn't it?

A. I just don't know about them.

Q. Now, when did RCA and GE start to commence importation of radio and/or television receivers into Canada?

1052 A. I can't tell you when they started it, Mr. Dodds. I know it has been customary for many manufacturers who do have operations in Canada—and I believe we were

told that at one point by somebody from CRPL; that this would be permissible if we took the pool license up there—to do the principal manufacturing in Canada and then supplement by importing certain models to Canada.

Mr. Dodds: Again, I move to strike the answer. I am only talking about RCA and Zenith.

The Court: The objection is sustained.

The answer is stricken.

By Mr. Dodds:

Q. I would like to know, again, if you know when RCA and GE began to import radio and/or teleivision receivers into Canada from the United States.

A. I don't know when they began; no, sir.

1053 Q. Do you know how many sets per year that they exported from the United States to Canada?

A. No, sir. I don't know that.

Q. Well, then, what was the source of your information for the statement which I have just quoted to you from the record?

A. The source of the information was evidence that we secured while we were—during the 1950's relating to the activities of RCA and GE in importing radio and television receivers into Canada from the United States.

Q. Well, now, you say during the 1950's. During what part of the 1950's?

A. I believe this information related to a period from about 1950 to 1955.

Mr. Dodds: Well, then, again I move to strike the answer, because the statement which I just quoted to you said that as soon as the lawsuit with Zenith was settled, which I believe the testimony was in September, 1958, they have been importing goods up there from the United States in large quantities.

By Mr. Dodds:

1054 Q. Now, I want to know what the basis of that statement is?

A. Well, I don't recall that I made the statement confined to the period of time after 1958.

The Court: Would you give them the page number, Mr. Dodds.

Mr. Dodds: 673.

The Court: Page 673.

By the Witness:

A. Well, Mr. Dodds, I would like to call your attention that the statement is in two paragraphs, and that my reference—

By Mr. Dodds:

Q. It is only one paragraph, as I see it.

A. Two sentences. My reference to "as soon as they settled the lawsuit that was all over and done with," was in reference to their argument that RCA and GE and the phone company had made that they couldn't participate in any license that permitted manufacture in the United States; in other words, that that argument was abandoned at the time of the lawsuit.

1055 Now, my subsequent statement—"They have themselves been importing goods up there from the United States for years, in large quantities"—was not meant to be limited to the period of time after the lawsuit.

Mr. McConnell: I object, then, to striking his answer. His answer was perfectly responsive.

The Court: The motion to strike is denied.

By Mr. Dodds:

Q. Then the second sentence to that paragraph, according to your testimony, has no relation to the first sentence?

A. The only relation it has to the first sentence was

that it was illustrating that they themselves apparently didn't believe what they were telling us, that they couldn't permit imports into Canada because they had themselves been doing it for years.

Mr. Dodds: I again move to strike the answer. I asked a simple question, yes or no.

By Mr. Dodds:

Q. Is the second sentence related to the first sen-
1056 tence, or unrelated to it?

A. It is related to it in the way I stated, Mr. Dodds.

The Court: This is an explanatory answer, and this is his endeavor to explain in what way, if any, it is related to it.

By Mr. Dodds:

Q. I believe you testified, or one of your associates, that Zenith Radio Corporation received ten million dollars in damages from litigation with General Electric and Western Electric and RCA; is that correct?

A. Yes. There was some reference to that sum.

1057 Q. Now, did that payment cover damages suffered by Zenith with respect to all foreign countries?

A. It is my recollection, Mr. Dodds, that at the time we settled this matter, that Mr. McConnell and I agreed that we would waive the damages that we had asked for loss of trade in other foreign countries, but that we insisted that we be compensated for the loss of trade that we had suffered in Canada.

And that was the figure, I believe untrebled, that was used. That is my recollection of it.

Q. Does your settlement agreement between Zenith and RCA reflect that, Mr. Wright?

A. No, sir. It has no reference to that—to any allocation of what the damages were for.

Q. Did the other parties—RCA and GE and Western Electric—agree to that allocation of all the damages to damages suffered in Canada?

A. Well, they agreed to pay the ten million dollars, which was our proposal—

Q. I don't think that is an answer to my question. Did they agree to the allocation of all the damages
1058 to the damages suffered in Canada?

A. Apparently they did.

Q. What is your basis for saying that?

A. This was the proposition we put to them, and it was accepted by them.

Q. Not in writing, though.

A. It was settled—the settlement agreement was in writing, but there was no reference to this allocation in the agreement itself.

Q. So there was nothing in writing to show that they accepted that allocation?

A. I guess there isn't any specific allocation in the agreement, no.

Q. And still, so there is nothing in writing to show that the other parties, the adverse parties—RCA, GE, and Western Electric—accepted that allocation of damages?

Mr. McConnell: That is a matter of argument, your Honor.

Mr. Dodds: I just asked if there was any documentary evidence to show that. There is nothing argumentative about it.

The Witness: The settlement agreement is the only
1059 documentation I know of on the subject.

The Court: And that doesn't mention that allocation?

The Witness: That doesn't mention it, but they signed it.

The Court: I think he's proved it indirectly, and that's as good as you can do.

Mr. Dodds: I believe that's all the questions.

The Court: Anything further, Mr. McConnell?

Mr. McConnell: Yes, I have a few questions.

The Court: Let's finish up with him, and Mr. Wright can get back to his business.

The Witness: Thank you, your Honor.

Cross-Examination by Mr. McConnell.

Q. You were asked by Mr. Dodds about GE and RCA raising the point that they couldn't permit importation of American goods under their licenses. When did they raise that point?

A. I believe that was first raised to Zenith some-1060 where in the late twenties, Mr. McConnell.

Q. Well, did they raise it in the lawsuit?

A. Yes, sir.

Q. That was one of the issues in the lawsuit, wasn't it?

A. Yes, sir; yes, sir.

Q. Now, after telling us that, after the lawsuit was settled, they did give Zenith a license to import without manufacturing in Canada, didn't they?

A. Yes, sir.

The Court: Import, using RCA patents, you mean?

Mr. McConnell: Using—they gave us a license under RCA. Well, let the witness tell it.

By Mr. McConnell:

Q. What license did they give?

A. They gave us a license under all their patents in the Dominion of Canada on radio and television receivers.

The Court: They is who?

The Witness: The Radio Corporation of America, the General Electric—

1061 The Court: I just wanted to be sure it wasn't the Canadian patent pool again. All right.

The Witness: (Continuing.) The General Electric Company and Western Electric, which is the patent arm of the telephone company. And these licenses had no restriction whatever as to where the goods might be manufactured.

1062 The Court: But they dealt only with patents of RCA, Western Electric and the Telephone Company?

The Witness: And General Electric, yes, sir.

The Court: General Electric. All right.

By Mr. McConnell:

Q. And weren't all of those patents in the Pool?

A. Yes, sir.

Q. Now, that came about because of the lawsuits, didn't it?

A. Yes, sir. I would assume so. That was one of the conditions that we insisted—that there be such a license granted to us.

Q. That was in the settlement too?

A. As part of the settlement of the case, yes, sir.

Q. That was part of the settlement, wasn't it?

A. Yes, sir.

Q. Now, going to this question that Mr. Dodds asked you about, you and I participated in those discussions, didn't we—in the settlement talks?

1063 A. Yes, sir.

Q. And with the attorneys for RCA, the attorneys for General Electric, and the attorneys for the Telephone Company?

A. Yes, sir.

Q. And they were pretty good attorneys, weren't they?

A. Yes, sir.

Q. Big law firms in New York?

A. Yes, sir.

Q. What were their firms, do you remember?

A. RCA was represented by Cahill, Reindell & Ohl, I guess it is now; Fish, Richardson & Neave, patent lawyers; and by Kirkland, Fleming here; and by Johnson, Thompson, Raymond & Mayer; at one point, by Adlai Stevenson.

The Telephone Company was represented by the—I believe it's Bushby, Ballentine—

Q. Dewey, Ballentine—

A. Dewey, Ballentine, Bushby & Palmer.

General Electric was represented by Simpson, Thatcher & Bartlett.

Q. Do you remember Whitney, North & Seymour?

A. Yes, sir.

1064 Q. President of the Bar Association, the American Bar Association?

A. Yes, sir.

Q. He was in those talks, wasn't he?

A. Yes, sir.

Q. Now, do you recall that prior to the settlement talks, the deposition had revealed that during the damage period which we were talking about, because of currency restrictions, no radio or television sets could be imported into England or Australia regardless of the Pool?

A. There was a period of time in there where there were import regulations based on currency in foreign exchange.

Q. And do you recall that we discussed that with our opponents in the settlement, and conceded that we couldn't prove damages for those countries during that period of time?

A. My recollection of it is that we felt we couldn't prove it for a portion of the period of time, at any rate.

Q. Well, do you recall that we ever got to a point in our settlement negotiations with Mr. Cahill and Mr. North,

and Mr. Woods, where we were only talking about
1065 damages in Canada?

A. Yes, sir.

Q. And do you recall that the simple computation of single damages in Canada during the damage period amounted to the sum of ten million?

A. I do.

Q. And that was the figure that was used to settle this lawsuit, wasn't it, for our loss and damage?

A. Yes, sir.

Q. And it was after they had agreed to pay ten million for that damage that these three companies, at least, decided that they could license imports from the United States into Canada; is that right?

A. Yes, sir.

Q. In spite of any patent laws?

A. Yes, sir.

Q. And you remember that was discussed too in our settlement talks?

A. Yes, sir.

Mr. McConnell: That's all.

The Court: Anything further?

1066 Mr. Dodds: No further questions.

The Court: All right. We will take our morning recess.

(Witness was excused.)

(Thereupon, a short recess was taken.)

1067 Mr. Dodds: Your Honor, at this time I should like to offer in evidence a number of exhibits which are included in a binder, and I will go through those—

The Court: These 52 and 55 are not in the binder?

Mr. Dodds: They are in the binder, duplicates in the binder.

The Court: I will give you these back.

Mr. Dodds: I might go through them briefly and point out what they relate to, because these are not being offered through witnesses.

In this binder, Exhibits 36 and 37 are plaintiff's reply to defendant's counterclaim in the Zenith-RCA action in Delaware setting up the antitrust counterclaim.

Exhibits 38 to 43 are relevant papers in the RCA-Zenith litigation here in Chicago setting forth the nature of the antitrust charges. And you may recall that in previous colloquy, or in opening statements, reference was made to the widely different nature of the charges in those two actions, and these pleadings are put in there for that pur-
pose. These pages are within the stipulation of ex-
1068 hibits to be offered.

The next four documents are documents in the United States antitrust action against General Electric, Westinghouse and Philips, and the copies in the judge's official binder are certified by the clerk of the Court of the Southern District of New York. They represent the complaint of the United States against these three companies, and they represent the final judgment. There were separate final judgments with respect to General Electric, Westinghouse and Philips.

And you might look at, for example, Exhibit 46, the Westinghouse judgment to which I think I advertised earlier. I think the section that is pertinent to our present argument is Paragraph IV on Page 3 in which it says that Westinghouse judgment to which I think I advertised into, adhering to, enforcing or claiming rights under any contract, agreement, understanding, plan or program with any other person which directly or indirectly restricts or prevents any manufacturer of home entertainment ap-
paratus in the United States from exporting any
1069 such apparatus from the United States into Canada.

The Court: You are offering this in support of your

theory that this covered only relationships between the United States and Canada and didn't cover the world.

1070 Mr. Dodds: No, your Honor, it is broader than that. Let me finish it and I will tell you what it is offered for.

And sub-clause B:

"Directing or causing or entering into any agreement with a foreign subsidiary of Westinghouse to take or actively consent to such subsidiary taking any action to restrict or prevent any manufacturer in the United States from exporting any home entertainment apparatus from the United States into Canada."

The important part is what follows:

"The provisions of this Section IV shall not be construed to prohibit, without more patent license agreements or assignments and the patents of the three parties concerned still remain in the Canadian Radio Patents Limited."

The antitrust action was settled with expressed permission, and I believe the tenure of this—

Mr. McConnell: I object to an argument at this

1071 time on these documents. We are going to have an oral argument when we get through with this case.

The Court: What he is doing, and I think for the purpose of—and I will consider it an argument, but for the purpose of trying to explain to me why this is being offered at this time, I would like the explanation, and I don't accept, perhaps, your explanation, but at least I would like to know for what purpose it is offered.

Mr. Dodds: I agree that this is argument, but I think it is helpful to put these in place, and I believe there has been other testimony to the effect that the patents of these three concerns are still in the Canadian Radio Patents Limited.

I would like to know if defendant disputes the fact that the patents of those three concerns still are in the CRPL.

Mr. McConnell: They are in there with the qualification that they can't be used to stop imports from the United States into Canada; that is the way they are in there.

1072 The Court: Imports of Zenith only?

Mr. McConnell: Anybody.

The Court: All right.

Mr. Dodds: What is the basis for that qualification, Mr. McConnell?

Mr. McConnell: I will answer this in oral argument. I am going to do my arguing at one time, if I may.

Mr. Dodds: All right.

Now, the next Exhibit, 48, is a copy of the RCA-Zenith settlement agreement, which is the basis of this—it is offered by stipulation, and I think it is interesting to note paragraphs 2, 4 and 5 of that settlement agreement, and they are, as I read them, quite similar. These three paragraphs, 1—no, I am sorry, paragraph 2, I believe, outlines the license from RCA to Zenith and Rollins.

Paragraph 4 provides for a royalty free exchange of licenses between General Electric and Zenith and Rollins.

In paragraph 2 it provides for exchange of licenses between RCA and Zenith and Rollins.

1073 In paragraph 5 it provides an exchange of royalty free licenses between Western Electric and Zenith and Rollins; the point merely being that there were royalty free licenses going in both directions, that was a result of the royalty free exchange. It was not a one-sided capitulation by which RCA gave up everything and got nothing.

1074 I should also like to call attention to Paragraph 3 of the license which specifies certain royalties to be paid by each party to the other, and in brief it provides that RCA shall pay to Zenith royalties which will fall

within the limits of 1.7 million to 2.1 million while Zenith will pay to RCA royalties falling within the limits of 2.8 million to 4.7 million; the amounts within those ranges to be settled by arbitration; so that it was not a completely one-sided agreement.

Now, the next exhibit, your Honor, is Exhibit 49, which is also in by stipulation, and this comprises Sections 66 to 73 of the Canadian Patent Act, which is now in force, which defines whatever there are in the way of restrictions upon and penalties for licensing of importation, and there are certain portions which I would like to read.

66, Paragraph 1:

"The Commissioner may, at any time, by notice in writing addressed to the patentee of any patent specified by him, or to his registered representative in
1075 Canada, and to every person who has a registered interest in such patent, require the patentee and such persons in respect of such specified patent to transmit and deliver to the Commissioner within 60 days from the date of such notice, or within such further time as the Commissioner may allow, a return stating:

"(a) whether the patented invention is being worked on a commercial scale in Canada, and the place where and the name and address of the person by whom the patented invention is being so worked, and

"(b) the reasons, if any, why such patented invention is not being worked on a commercial scale in Canada."

Then turning over to the next section, 67, Paragraph 1, this specifies what happens, the penalties consequent upon certain failures to work which are termed "abuses." You will notice the marginal title of this section is "abuse of rights under patents."

1076 "The Attorney General of Canada or any person interested may at any time after the expiration of

three years from the date of a grant of a patent apply to the Commissioner alleging in the case of that patent that there has been an abuse of the exclusive rights thereunder and asking for relief under this Act."

The next section is what amounts to such abuse:

"(2) The exclusive rights under a patent shall be deemed to have been abused in any of the following circumstances:

"(a) if the patented invention (being one capable of being worked within Canada) is not being worked within Canada on a commercial scale, and no satisfactory reason can be given for such non-working, but if an application is presented to the Commissioner on this ground, and the Commissioner is of opinion that the time that has elapsed since the grant of the patent
1077 has by reason of the nature of the invention or for any other cause been insufficient to enable the invention to be worked within Canada on a commercial scale, the Commissiner may make an order adjourning the application for such period as will in his opinion be sufficient for that purpose;

"(b) if the working of the invention within Canada on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him, or by other persons against whom the patentee is no[t] aking or has not taken any proceedings for infringement;

"(c) if the demand for the patented article in Canada is not being met to an adequate extent and taking or has not taken any proceedings for infringe-
unreasonable terms;
1078 grant a license or licenses upon reasonable terms, the trade or industry of Canada or the trade of any person

or class of persons trading in Canada, or the establishment of any new trade or industry in Canada, is prejudiced, and it is in the public interest that a license or licenses should be granted;

"(e) if any trade or industry in Canada, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire, license, or use of the patented article, or to the using or working of the patented process;

(f) if it is shown that the existence of the patent, being a patent for an invention relating to a process—"

And I think that we can disregard that. We are not talking about process patents.

Subsection 3:

"It is declared with relation to every paragraph of subsection (2) that, for the purpose of determining whether there has been any abuse of the exclusive rights under a patent, it shall be taken that patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be worked on a commercial scale in Canada without undue delay."

Then the first portion of the second—

Mr. McConnell: Before you go on to sixty-eight, would you mind reading in the definition of "work on a commercial scale" which is found on the first page of the Patent Act. It is under (j).

Mr. Dodds: What section are you referring to, Mr. McConnell?

The Court: Under the definitions on page one.

Mr. McConnell: Page one.

The Court: I have read it, so it is not necessary, unless you want to put it in the record.

Mr. Dodds: Well, I will read it into the record:

"Definitions:

"(j) 'Work on a commercial scale' means the manufacture of the article or the carrying on of the process described and claimed in a specification for a patent, in or by a means of a definite and substantial
1081 establishment or organization and on a scale that is adequate and reasonable under the circumstances."

And there will be testimony on that, your Honor.

Going on to Section 68:

"On being satisfied that a case of abuse of the exclusive rights under a patent has been established, the Commissioner may exercise any of the following powers as he may deem expedient in the circumstances:

"(a) He may order the grant to the applicant of a license on such terms as the Commissioner may think expedient, including a term precluding the licensee from importing into Canada any goods the importation of which, if made by persons other than the patentee or persons claiming under him would be an infringement of the patent,—"

And then skipping on down to the bottom of the page:

1082 "In settling the terms of a license under this paragraph the Commissioner shall be guided as far as may be by the following considerations:

"(i) he shall, on the one hand, endeavor to secure the widest possible user of the invention in Canada consistent with the patentee deriving a reasonable advantage from his patent rights."

Then I think we need not read any more, but Section 68(b) through (d) describe the penalties for acts which the Commissioner finds to be abuses of the patents, which in the last clause, Section (d) reads:

"if the Commissioner is satisfied that the objects of this section and section 67 cannot be attained by the exercise of any of the foregoing powers, he shall order the patent to be revoked, either forthwith or after such reasonable interval as may be specified in
1083 the order, unless in the meantime such conditions as may be prescribed in the order with a view to attain the objects of this section and section 67 are fulfilled, and the Commissioner may, on reasonable cause shown in any case, by subsequent order extend the interval so specified; but the Commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party."

And there will be testimony showing the relationship of the treaty of Paris to that section.

1084 Now, Exhibit 51 is plaintiff's Interrogatory No. 8 to defendant and defendant's answer. This was filed in this case a considerable time ago, and I should like to read it because I think it relates to some of the proceedings which occurred at this trial, and Interrogatory No. 8 reads as follows:

"With respect to the allegations the plaintiff has participated in a combination and conspiracy in restraint of trade as set forth in Paragraph 13 of defendant's answer, specify and identify;

"a. Any documents and any correspondence on which defendant will rely at the trial in support of such allegations and the location and custody thereof;

"b. Any acts or omissions of plaintiff and each of its alleged co-conspirators other than becoming a party to the agreements referred to in Subparagraph (a) of this Paragraph 8 on which defendant will
1085 rely at the trial in support of such allegations, and

specify the time, place and persons present when each of such acts occurred and the substance of what was done and said;

"c. The time and place at which, and the other circumstances under which, the alleged combination, conspiracy and restraint of trade took form;

"d. The time and place at which and the other circumstances under which plaintiff was inducted into the alleged combination and conspiracy in restraint of trade.

"Answer: Answering Interrogatory No.—"

And this is in answer to No. 7, which was incorporated by reference into his answer of Interrogatory No. 8.

"—defendant avers that it cannot identify the documents and other evidence on which it will rely at the trial in support of the allegations of Paragraphs 12 and 13 of its Answer until it has conducted pretrial
1086 discovery proceedings herein pursuant to the Federal Rules of Civil Procedure, and has thereby obtained from plaintiff and others access to the relevant documents and other evidence bearing on the issues. In the course of such discovery proceedings the details of plaintiff's patent misuse will certainly, defendants believe, be fully disclosed. Meanwhile, defendant is without knowledge of the specific details of such misuse and conspiracy."

Now, contrast that with the pretrial stipulation which is filed which comprises 13 pages of listed documentary exhibits on which defendant is relying; ten of those 13 pages are documents from Zenith's files. They are documents from the RCA-Zenith litigation, not from the Hazeltine files, and here in this answer to interrogatory they state that they don't know any of these things. We submit that the answer was not in good faith and that there has

been a deliberate suppression of discovery proceed-
1087 ings which would enable the plaintiff properly and in good time to prepare for these issues.

As a matter of fact, in the pretrial stipulation finally entered into, it was provided that these papers would be made available 30 days before trial. They were actually made available to counsel for plaintiff about ten days before trial.

That concludes—there is, finally, a group of exhibits which represent some documents taken from the Zenith files. They were put in because of haste. We may or may not later withdraw them. I think they do not need any individual comment.

The Court: All right.

Mr. Dodds: Now I would like to call as my next witness Mr. Henderson.

1088 GORDON FRIPP HENDERSON, called as a witness on behalf of the Plaintiff and counter-defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Would you identify yourself and your address?

A. I am a practicing lawyer in the City of Ottawa, Canada.

The Court: What is your first name?

The Witness: My first name is Gordon, Gordon Henderson, practicing law in the City of Ottawa in the firm of Gowling, MacTavish, Osborne and Henderson.

By Mr. Dodds:

Q. Would you give a brief resume of your education and experience?

A. I graduated from the University of Toronto in Arts

in 1934, from the Osgood Hall Law School in 1937 and started to practice law in Ottawa with the firm I am now associated with in 1937, and from the time I graduated I started in a patent practice.

1089 Q. Are you a member of any bar, and if so, what?

A. Yes, I am a member of the bar of the Province of Ontario, as well as the bar of the Province of Quebec.

Q. Will you state whether or not you are Queen's Counsellor, and, if so, when you were so—

A. I was appointed a Queen's Counsel in January of 1952.

I should say that I joined the bar of the Province of Quebec in 1952 and the bar of the Province of Ontario in 1937.

Q. Are you engaged in any activities as a lecturer or editor and if so, will you state what those are?

A. Yes, since 1942 I have been the editor of the Canadian Patent Reporter, which is a series of reports devoted entirely to patent, trademark and copyright matters.

I have lectured at the Carlton University in Ottawa in public law since 1946 to 1963. I am now lecturing in patent law at Ottawa University, and I have been lecturing in patent law since 19—well, in the last four years,

1090 and I am now lecturing in patent law at that university.

Q. I show you a reproduction of the title page and Sections 66 through 73 of the—I believe it is known as the Patent Act of 1935, and ask you if you are familiar with that act.

A. Yes, I am, and I so identify this document.

Q. Is that the act which is currently in force in Canada?

A. There has been—it is now part of the revised statutes of Canada, 1952, Chapter 203; that is right.

Q. Have there been any amendments in that act since its original enactment in 1935?

A. Well, since the 1935 enactment there has been one change in Section 68, Subsection (d). The word "may" was changed to the word "shall" in that section. I think it is the third line of the copy you have handed me, and that change took place in the 1947 statutes. You will see that noted in the numbers at the bottom of the section, 1947, Chapter 23, Section 18 of the Statutes of Canada.

That is the only change since 1935.

1091 Q. Is the effect of that change to tighten or relax the authority of the Commissioner to make rulings in the types of cases to which that applies?

A. It takes away the discretion and makes it mandatory—under our Interpretation Act, which is a statute of Canada, the word "shall" is mandatory and the word "may" is permissive; so by having changed from "may" to "shall" it is now mandatory in the Commissioner to follow the terms of this subsection rather than permissive. So it is tightened.

Q. Have you, in your practice, become familiar with these sections and with their interpretation by a Canadian court?

A. I am. I have appeared before the Commissioner of Patents and also before the Courts on appeals relating to these sections.

Q. Does this Act in your opinion contain any prohibition of importation?

A. Well, it creates risks if importation is carried out.

In other words, there are sanctions if importation
1092 is carried out to the degree that it falls within either subsection (a) or subsection (b) of 47, subparagraph 1; so there are risks involved in importing patented articles into Canada.

Q. Is there any express or explicit prohibition against importation?

A. No.

The Court: And on whom do these risks fall?

The Witness: The patentee, sir.

By Mr. Dodds:

Q. The patentee or the patent owner?

A. The patentee is defined in the Act as the owner of the patent for the time being, that is under Section 2 you will see "patentee" is defined.

Q. Now, would you refer to the last clause of Section 68(d) which limits the authority of the Commissioner to make orders of revocation, and will you state what you know as to whether or not that authority has been limited and, if so, by what treaty and to what extent.

A. Yes.

Article 5—now, the name of the treaty escapes me
1093 because there have been so many revisions at various places; whether it is the Treaty of Paris, the treaty that was amended at Lisbon and then later at London, I don't want to be too certain on, but it is the international treaty relating to patents, and it is Article 5 of that treaty that contains a series of limitations in respect to the granting of exclusive licenses.

Q. I show you a volume of the journal at the patent office society for February 1959, which contains an article entitled "Convention of Paris for the Protection of Industrial Property of March 30, 1883, as revised at Lisbon October 30, 1958," and ask you if you can recognize that as the treaty to which you referred?

A. Yes, this is the treaty. I would identify the treaty as the Convention of Paris of 1883. This is the treaty to which I had reference.

1094 Q. And what limitations did that treaty place upon the authority of the Commissioner of Patents of Canada to issue orders of revocation?

A. Well, there were several limitations. The first limi-

tation was that the sanction of compulsory license must be unsuitable, that is, that it was not a remedy that relieved the mischief or relieved the abuse. That was one.

Another related to the time when a revocation could be put into effect; in other words, there was a limitation that the application for revocation, that is, the commencement of the proceedings for revocation could only take place after two years had elapsed from the compulsory license order.

Now, that—and I am expressing a personal opinion here, was somewhat—could be considered to be ambiguous, or might be considered to be ambiguous, in that it isn't too clear to me whether that meant if a compulsory license order had been granted or whether a compulsory license order had to be granted as a condition precedent to any revocation proceeding, but, in any event, there was
1095 this limitation of the two-year period.

Q. Do you recall whether there has been any decision of a Canadian court resolving that what you term "ambiguity"?

A. There is no decision of a Canadian court in this area.

Q. Do you know of any decision of a Canadian court which particularizes on what constitutes an abuse under the section of the Canadian Patent Act?

A. Yes, there are several cases relating to the abuse sections. The most recent case is that of Rodi and Wienenberger vs. Metalliflex, Limited, which is reported in the 1963 Exchequer Court Reports. That is the most recent case. The one immediately before that, that was reported in the Ontario courts on an appeal from the Commissioner was that of Gordon vs. Callwood. Both of these cases were decided by the same court, the Exchequer Court, Mr. Justice Thurlow in each case. There have been a series

of them over the years. I have only given you the two most recent decisions of the Exchequer Court.

1096 Q. And what was the interpretation which those decisions placed upon this question of abuse of the patent rights?

A. Well, they dealt primarily with the first subparagraph, that is, Subparagraph (a) of Section 67, Subsection 1, and that is what we call our working section which requires that there be manufactured in Canada in a substantial and definite establishment to an adequate and reasonable extent. The word "adequate" is a word that has been indicated to be elastic in its connotation, and there has been some judicial expression in England on that point, and that is in the McKekni case where it was indicated that the manufacturer in Canada should be reasonably close to the demand for a patented article in our country.

The two Canadian cases to which I referred adopted that reasoning of the McKekni case, and that is to say that the manufacturer in Canada should be reasonably close, should bear a reasonable resemblance to the demand for the patented article.

Q. To avoid abuse?

1097 A. To avoid abuse. In other words, if the manufacturer is not to that extent, then there has been an abuse under that paragraph.

Now, I shall say that this is a test given in the ordinary circumstances, in the ordinary case, without there being special difficulties. I am talking about the situation that normally occurs. If special circumstances arise, well, of course, they would have to be taken into consideration.

1098 By Mr. Dodds:

Q. Are you familiar with the policy of Canadian Radio Patents, Limited, which has been referred to herein as CRPL, with respect to the licensing of imports, importations from the United States?

A. Yes. I'm familiar with it from two standpoints. I am familiar with it from the standpoint of the Royal Commission investigation in patents a few years ago, because CRPL made a presentation to that Commission. Secondly, I am familiar with it from negotiations which I have recently had with CRPL relating to licensing to import.

Q. And from your experience, under what circumstances will CRPL grant licenses for importation?

A. They will grant a license to import when the article to be imported is not being manufactured in Canada by any—not manufactured in Canada. In other words, it is a type or kind of article which is not being manufactured in Canada.

Q. Could you give any example of articles of that
1099 type?

A. Yes, yes. Transistor radios—I am currently negotiating with CRPL relating to the importation of transistor radios. I am currently negotiating with CRPL on the importation of the television set which is—the five-inch screen, the little television set, and particularly television sets which have a screen size less than eight inches.

Q. Well, leaving out your current investigation, do you have any acquaintance with the policy of CRPL in the recent years, whether it is the same or different than that you have described?

A. Well, as far as I am aware in my associations with them, this has been their stated policy, and this has been the policy they have expressed to me in my negotiations. I'm trying to find a date, but certainly their stated policy about four years ago—I think that was the date when the presentation was made to the Royal Commission. My negotiations or discussions with them have dated for a period of two years.

1100 Q. These licenses you have described, are they for fixed periods or are they terminals; and if so, under what circumstances?

A. They are terminable in 60 days by either side. In other words, if it becomes apparent that a Canadian manufacturer will become interested in the particular field of the article concerned, then there is a termination clause which would enable CRPL to terminate on 60 days.

Mr. Dodds: Your Honor, one of the exhibits in the Plaintiff's binder of Exhibits, No. 50-A, are excerpts from a report of "Royal Commission on Patents, Copyrights, and Industrial Designs," subheading "Report on Patents of Invention," and I offer in evidence as Plaintiff's Exhibit 50 this copy of the report, legalized before the United States Consul in Ottawa, Exhibit 50.

And I will later offer in evidence the exhibits in the binder, 50-A, which are the exhibits—

Mr. McConnell: I haven't seen this document.

1101 Mr. Dodds: You have copies.

Mr. McConnell: Do you want to give us a chance to look at it over the recess?

The Court: I will defer ruling on it until you have looked at it, counsel.

Mr. McConnell: Thank you.

By Mr. Dodds:

Q. Now, Mr. Henderson, have you had any connection with the Royal Commission whose report I just referred to?

A. Yes, sir. I appeared as counsel for several companies that made submissions to the Royal Commission. At the time the Royal Commission first sat, I was president of the Canadian Patent Institute, and presented a brief of the Canadian Patent Institute to the Royal Commission.

When the Royal Commission set about to write the report, one of the members of the Royal Commission, through pressure of his office, was obliged to discontinue his activity and I was then asked to become legal technical adviser to the Commission during the writing of the report, and I so

acted. But I had no participation in the actual writing. I was merely technical adviser to them on patent law.

1102 Mr. McConnell: I wonder if I could have a little cross-examination on voir dire, on that document, to see whether or not I have objection to it.

Mr. Dodds: Pardon? I didn't hear you.

The Court: Well, why don't you look at it during the noon hour and you can conduct your cross-examination this afternoon.

Mr. McConnell: All right, that's fine.

The Court: I'm not going to compel you to cross-examine this morning. There isn't enough time left anyway.

Mr. Dodds: Well, I am perfectly certain that counsel on the other side has been well aware of this report for many years. It is a report that is four years old, and the document is very well known among the patent profession both here and in Canada.

Mr. McConnell: Well, I don't mind you testifying of your own knowledge, but when you testify as to mine, I have serious objection. I have never seen this—

Mr. Dodds: I am not testifying at all. I'm just making a statement.

1103 By Mr. Dodds:

Q. Mr. Henderson, were you familiar with the purpose of the organization and the functioning of the Royal Commission?

A. Yes, sir.

Q. And what was its objective? What was the purpose of the commission?

A. The purpose of the commission was to examine the Canadian patent law and to make recommendations to the Government as to its change. When I say as to its change, I should put it better—as to its betterment. If this involved change, then to recommend change.

Q. What was the organization of the Commission? What was its membership? Where did they come from?

A. The membership of the Commission was as follows: The chairman of the Commission was Chief Justice Ilsey, who is the chief justice of the court in Nova Scotia; that is, he is the chief justice of the Superior Court of Nova Scotia. He was at that time; he still is.

Mr. W. W. Buchanan, Mr. William Buchanan was at the time of his appointment a member of the Tariff
1104 Board of Canada. During the deliberations of the Commission, his term of office expired. He is now a private consultant in that field.

The third member was Mr. Guy Favreau who, at that time, was, I believe, associated with the Restrictive Trade Practices Commission. He later became Deputy Attorney General and, at the present moment, is now Attorney General of Canada.

He, however, because of the pressures of his office, was obliged to retire before the report was written. He did, however, sit with the Commission during its hearings.

Q. And how did the Commission function? Did it hear testimony, hear witnesses? What was its operation?

A. It entertained briefs and it heard submissions on those briefs. It did not engage counsel. It did have—I'm sorry; Mr. Leedlaw was associated with the Commission, but he did not act as counsel in the sense of asking questions. The Commission itself asked most of the questions of the persons who attended in support of the
1105 briefs. So they actually heard submissions and questioned those who were making submissions.

The Court: Maybe this might be a good time to break for lunch, Mr. Dodds.

(Whereupon, a recess was taken to 2:00 o'clock, p.m., of the same day, February 24, 1964.)

1106 * * * (Caption—59-C-1847) * *

Before the Hon. Richard B. Austin,
Monday, February 24, 1964,
2:00 o'clock, p.m.

The trial was resumed pursuant to recess.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1107 The Clerk: Case on trial.

GORDON FRIPP HENDERSON, called as a witness on behalf of the Plaintiff and counter-defendant, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Direct Examination by Mr. Dodds (Continued).

Q. I believe at the conclusion of the testimony this morning you had referred to the Royal Commission on patents, and so forth, its operations—I would like you to refer to Defendant's Exhibit 50, commencing at Page 90 of the report and ask you if you would say what that relates to and then read that portion into the record.

A. At Page 90 the Royal Commission dealt with the submissions made to the Royal Commission report on the operation and organization of Canadian Radio Patents Limited, and the recommendation of the Royal Commission on those submissions is found starting at Page 90.

Do I understand that you would like me to read what
1108 was stated by the Royal Commission in this area?

Q. If you would, please.

A. Under the heading "Canadian Radio Patents Limited" the following appears:

"Public representations were made to the Commission by S. G. Waters Limited, a company engaged in the distribution of various kinds of household electrical appliances, that the structure and operation of Canadian Radio Patents Limited should be examined to determine whether that company offended the patent law insofar as it now prevails or ought to prevail in Canada, more particularly in reference to the utilization of a portfolio of patents to preclude the importation of certain articles into Canada. Similar representations were made by others.

"Canadian Radio Patents Limited (hereinafter called CRPL) was incorporated in 1926 for the purpose of acting as a patent licensing agency. At the time of the presentation of its brief to this Commission it acted
1109 as the central patent licensing agency in the administration of patent rights in the radio, television and general electronic fields in respect of patents owned by its then five shareholders:

"Canadian General Electric Company,
"Canadian Westinghouse Company,
"Northern Electric Company,
"Canadian Marconi Company, and
"Canadian Radio Manufacturing Company.

"It also acted as licensing agent in Canada for RCA-Victor Company and Hazeltine Electronics Corporation. CRPL acquired from such companies a non-exclusive license with the right to grant sub licenses.

"In its operation CRPL grants to any individual,

firm or corporation a license in respect of its portfolio of patents to manufacture in Canada radio and television receivers and certain electronic apparatus. In conjunction with such license it makes available to
1110 licensees general information relating to the manufacture of such equipment. CRPL sought to distinguish itself from a patent pool, which it defined as a company that acquired patents to be licensed only to the entities comprising the pool.

1111 "The evidence establishes that no one intending to carry on manufacturing operations in Canada was refused a license in respect of all patents contained in the portfolio. The license in respect to the manufacture of radio and television receivers requires the licensee to pay to CRPL a royalty on the basis of 3½ per cent of the manufacturer's net selling price. Various deductions permitted by the licensor in respect of such items as the cost of tubes, batteries, record changers and cabinets reduced the royalty to 2½ per cent of manufacturer's net selling price.

"The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver.

"CRPL indicated that it does not grant a license
1112 to any importer of radio or television receivers, except in the limited situation where the type or kind of radio or television receivers sought to be imported is not manufactured by any radio or television receiver manufacturer in Canada. It is particularly in respect of the policy of CRPL in precluding importers from bringing into Canada radio and television receivers that the complaint was made to this Commission.

"It was stated to be the policy of CRPL to enforce

its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio except in the limited area where permission has been granted to import the apparatus which CRPL agrees is not of a type or kind made in this country. CRPL will tell anyone who submits to it a diagram showing the circuit and layout what patents, if any, would
1113 be infringed by the manufacture, use or sale of apparatus constructed according to such diagram.

"CRPL has granted to the Department of Defense production a license whereby an annual royalty is payable covering all electronic products under the defense program.

"CRPL expressed concern about the compulsory licensing provisions of the Canadian Patent Act in the event that it should grant a license to any person to import in circumstances where any manfacturing was carried out in Canada under a patent included in the portfolio which it administered. This concern did not relate to the grant of a non-exclusive compulsory license by the Commissioner of Patents on the payment of a reasonable royalty. CRPL was itself prepared to grant a license of such a nature.

"The concern manifested itself in relation to the
1114 possibility that an exclusive license would be granted on the operation of Sections 67(2), (b) and 68, (b) of the Act. The grant of an exclusive license to any Canadian manufacturer would operate contrary to the purpose of the licensing agency in making patents available to any manufacturer in Canada. It is the intention of the licensing agency in fulfilling its purpose to avoid the delays and expense incident to patent litigation in the radio receiver and television receiver maufacturing fields. CRPL stated that the royalties

would be used by it through its shareholders for the purpose of research or by CRPL directly in the purchase of other inventions to be licensed among its
1115 Canadian licensees. An exclusive license would, therefore, be contrary to a fundamental purpose of its existence.

"To avoid the risk of such a license CRPL sought to justify its refusal to grant a license to import in circumstances other than where a type of apparatus covered by a patent in its portfolio was not made in Canada. The recommendations which we propose will eliminate this risk. CRPL and any holder of a portfolio of patents will have the right but not the obligation to grant a license to import where the circumstances warrant, without fear of an exclusive license. The proposal made by the delegates of the International Convention at Lisbon that Article 5 of the Convention be amended to provide that a compulsory license be granted only on a nonexclusive basis in a proposal that we elsewhere in this report be made part of our law.

1116 "A second concern expressed by CRPL in its evidence before us related to the possibility of an order of revocation of one or more of the patents in its portfolio following a compulsory license application. Such a possibility flows from Section 68, subparagraph (d) of the Patent Act as it now exists. We do not believe that it is likely that the Commissioner of Patents would revoke a patent where the abuse was based on the facts that a license had been granted to import. If the abuse is importation on the payment of a royalty, an abuse of this nature would not be remedied by revoking the patent and permitting importation by anyone and without royal obligation. Such a course of action would not cure the mischief.

"CRPL as it is now organized and as it now operates does not appear to us to be illegal. It is not illegal to acquire a portfolio of patents either by
1117 way of ownership of the patents or by way of acquiring a right to grant licenses. The mere control of a sector of industry through the accumulation of patents is not in itself illegal.

"The complaint against CRPL is that it refuses to grant a license to import. In refusing to grant such a license CRPL was not going beyond its legal right when manufacture was taking place in Canada pursuant to licenses granted by it in this country at reasonable royalty rates.

"However, there is inherent in the accumulation of patents in respect of a sector of industry a possibility that the portfolio will be used to the public prejudice. When so used an abuse does exist in respect of which legislation must prescribe effective sanctions if the pool or licensing agency by monopolization through
1118 acquisition of patents seeks to assert the patents beyond the scope of the patent monopoly or for purposes in respect of which the patent is not adapted to be used or to assert the monopoly in such a way as to constitute a restraint of trade abuse of patents.

1119 "Sanctions which now exist will be found in the provisions of Sections 2 and 32 of the Combines Investigation Act and Section 411 of the Criminal Code. Section 30 of the Combines Investigation Act provides a civil remedy at the instance of the Attorney General. The nature of these remedies, which are dealt with elsewhere in this report, is not, in our opinion, sufficiently all-inclusive. We believe that where a pool or licensing agency in control of a portfolio, in practice, operates to the detriment of the public that a civil remedy ought to be available in the hands of an indi-

vidual affected thereby. The remedy could take the form of a compulsory license with a reasonable royalty, a dedication of the patent, a royalty-free compulsory license or, in lieu of the above relief in compulsory license proceedings, relief of a similar nature by way of defense in a patent infringement action.

1120 "The evidence before the Commission did not indicate that the likelihood of the abuse by misuse of a patent portfolio was of such a nature as to justify the recommendation at this time of a sanction in addition to those now available other than a compulsory license at the instance of any person interested in the circumstances defined by section 30 of the Combines Investigation Act.

"The result flowing from the recommendation of the Commission is that a company holding a patent portfolio will have the right to grant a license to import in a proper case. The mere granting of a license to import will not in itself constitute an abuse that would give rise to the kind of compulsory license in respect of which CRPL expressed concern. Such a license could be granted. On the other hand, a company holding a patent portfolio is not obliged to grant a

1121 license to import where the patents are being commercially worked in Canada under conditions that do not constitute a misuse of patents."

Q. Mr. Henderson, is it your conclusion that the report of the Royal Commission approved the operations of CRPL?

A. Yes, sir. They found that their operation as stated to them did not offend any legal principle in Canada.

Q. Do you know of any legislation or official government—

The Court: They made no finding, though, as to whether they offended any legal principle of the United States?

The Witness: They made no—this was, as far as I am aware, not considered by them at all.

The Court: All right.

By Mr. Dodds:

Q. Do you know whether there has been any legislation or official government action subsequent to the issuance of this Royal Report which would modify or alter its findings?

A. No. I should point out that the Combines In-
1122 vestigation Act has undergone a change and the Criminal Code has undergone a change. The provisions of the Criminal Code have now been incorporated in the Combines Investigation Act. But insofar as Section 30 of that Act is concerned, this has not resulted—there is no change. Section 30 of the Combines Investigation Act, which is specific to patents and not of general application, is still as it was when they dealt with the matter, and the Patent Act is as it was when they dealt with the matter.

1123 Q. Mr. Henderson, could you state what in your opinion are the risks which a patent owner incurs in granting licenses to import into Canada, articles covered by the patent which he owns? If there are different degrees of severity, you might indicate what they are and what the relative risks are.

A. Yes, the risk, of course, flows from what happens once the license is granted. In other words, the risk involved is the—flows from the fact of importation rather than the mere granting of the license. In other words, the granting of the license is one step in giving rise to the risk. The risk arises when importation does take place. And I will assume, for the purpose of my answer to you, that the license is an effective license, and importation arises after it. The first risk, in my opinion, is that any person interested—that is, any person who chooses to build an

establishment to manufacture in Canada may seek to obtain a compulsory—a nonexclusive compulsory license for that purpose.

1124 Now, that in itself does not create a risk greater than CRPL would choose to undertake under its own operation. But the risk inherent in it is that CRPL loses its negotiating position relating to the terms of that license and especially the royalty rate. Because if an application is made by any person interested to manufacture, then the royalty will be fixed by the Commissioner of Patents pursuant to the Section that you have earlier mentioned.

So that the first risk, then, is that the Commissioner of Patents will fix the royalty if a compulsory license proceeding should be instituted and should be heard by the Commissioner.

I would expect that the spirit of the Act would give the Commissioner a guidance in favor of a lower royalty than I would be able to negotiate myself. This was the way I would look at it if I were advising a patentee, because the spirit of the Act is to encourage manufacture in Canada and I should think that in accordance with this spirit, I would expect a royalty rate lower than that which I perhaps could negotiate myself. I lose my freedom of

1125 negotiating by this step.

Secondly, there is the risk of the exclusive license provision being invoked against me because, if the capital that has to be expended by the manufacturer in Canada is of such a magnitude that he can satisfy the Commissioner that he is entitled to an exclusive license, the Commissioner is empowered to grant that type of license. And on one occasion—I'm thinking of the Celotex versus Donnacona case, which is reported in the Exchequer Courts in 1959—he did grant such a license. It was modified slightly by the court, but the risk is there.

Thirdly, there is the risk of revocation which you have drawn attention to. The provision is there; the risk is there.

Now, you have asked me to comment on the relationship of the risks. Certainly, the first risk is the most realistic one in the sense that this is the likelihood in this area, I would think. There is, however, a real risk of an exclusive license. I would think the revocation most unlikely.

1126 But the first risk is the risk that would most likely arise. The next would be the exclusive and, lastly, revocation.

1127 Q. Mr. Henderson, would you advise a client of yours having adequate financial resources, and owning an important group of patents to license the importation of articles covered by the patent, as being Canadian patents?

A. I would not.

Q. What would be your reasons for not? Because of these risks?

A. Well, because of these risks. I would prefer to negotiate my license for the purpose of obtaining a reasonable rate. And I would—in my opinion, the spirit of the Act is to create manufacture in Canada. And in my opinion—and it is my opinion that licensees should act in accordance with the spirit of the act. And this is the advice I would give.

Q. Notwithstanding these risks which you have described, can you state whether or not you know whether certain patent owners decide to take a chance and license importation anyway?

A. Well, yes. Risks have been undertaken in this area. I heard evidence this morning where licensing has taken place by people of Canadian patents, and licenses to import have been granted. And I know that people

1128 have assumed this risk, the risk that I have outlined.

Q. Would you state, would you advise a client whose patents were perhaps of secondary importance, secondary to commercial or political considerations—would you advise him whether or not to assume the risks and license importation?

A. Well, I wouldn't want to answer that in the abstract. I would certainly want to consider the relative risks involved. I mean, this is a matter of which risk is the one I must assume. And I would have to balance my risks to see which is the more serious of the risks. And I would act in accordance with my analysis in that regard. In other words, if I have to assume some risk, I will assume the one that I think is least likely to cause me trouble.

Mr. Dodds: No further questions.

The Court: Mr. McConnell.

Cross-Examination by Mr. McConnell.

Q. Mr. Hendekson, in your practice at the Patent 1129 Bar, have you represented the Hazeltine Corporation?

A. Me personally?

Q. Yes.

A. No, sir.

Q. Has your firm?

A. I would—I'm afraid I would think yes. But I'm sorry that I am pausing—

Q. Well, you know—

A. No, I don't know that they have. But I would think yes, but to be very frank with you, I can't positively say it, but I would expect they have, yes.

Q. They have also represented General Electric Company, haven't they?

A. Well, I personally represented General Electric on several occasions, yes.

Q. Well, what have you represented General Electric in?

A. I advised General Electric on a patent problem within the last two months.

Q. And you know that General Electric has directed this pool up there to license their patents for import, don't you?

A. I know nothing of the direction of the pool;
1130 no, sir.

Q. You don't know a thing about that?

A. I do not know the direction of the pool; no, sir.

Q. Well, do you know that they have authorized the license of their patents for import?

A. I have nothing of that, sir.

1131 Q. Have you ever—

A. Except what I heard this morning. I heard of this this morning.

Q. Have you represented this Pool?

A. When you say—put that to me, have I personally, I have not. My partner, Mr. Gowling, has for many years —or did for many years. He does not now.

Q. Well; your firm was general counsel for CRPL, wasn't it, for many many years?

A. That's what I just said. Mr. Gowling was the person in the firm that represented them and, certainly, my firm represented them for several years. That is quite right.

Q. Well, I am going to come back to your Royal Commission after awhile, on another phase of it.

But for the moment, what were you doing before the Commission? Who were you representing there?

A. When I appeared before the Commission, my primary responsibility was the Patent Institute of Canada.

At that time, I was the president of the Institute,

1132 Q. Did you represent any private clients?

A. I certainly did. I can't point to any I did, but

I feel reasonably certain I did. I was before the Commission many times.

Q. Were they members of the Pool?

A. No, sir. I cannot recall representing any member—any person who was a member of the Pool.

Q. Can you remember anybody that you did represent by name?

A. No, I cannot at this moment specifically point to any person. I represented—

Q. How long ago was it?

A. Oh, it was four to five years. And I represented a lot of people over the period of time. Bear in mind, this Commission endured for a long period of time, and it heard matters under copyright, patent, as well as industrial design. It endured for a long period of time.

Q. Well, I'm just going to ask you about CRPL, on that issue that you referred to when you read this matter into the record.

Now, did you represent anybody at all with reference to that issue?

1133 A. Well, my partner, Mr. Gowling, certainly did.

Q. He represented CRPL, didn't he?

A. Certainly.

Q. Certainly. And these things that the Commission was writing into the report, that was what you were trying to maintain there, weren't you—your law firm?

A. My law firm presented the submission on behalf of CRPL, and it certainly sought to say that CRPL was not doing anything that was illegal.

Q. That's right. You helped write the report, didn't you?

A. I did not help—I did not write the report. I participated in the deliberations, as I explained this morning. And I advised the Commission on the kind of thing that ought to be dealt with, and upon which a decision should be made.

As you will see, this report is written by Chief Justice Ilsey and Mr. Buchanan. I did not write the report.

1134 Q. Well, did you go down and go in conference with them when they were writing the report?

A. Yes, sir, I did.

Q. It took some period of time, didn't it? Two weeks, let's say?

A. Oh, it was longer than that.

Q. I think it was. Yes. Now, you told us this morning that this Patent Act in Canada had been amended so that these provisions—and you named them, under 68 and the various subsections—became one which the Commissioner no longer had any discretion about, but had to act on; is that right?

A. I did not say that.

Q. What did you say?

A. I said that there was one amendment made to Section 68, subsection (d) for Donald, where the word "may" had been changed to the word "shall"; that the word "shall" under our law is a mandatory word. Therefore, when that change was made in that subsection, that section became mandatory and did not become permissive.

1135 Q. All right.

A. I did not say anything about the general discretion of the Commissioner under the other sections of the Act.

Q. Well, let's see about that. You say that the change was made so that it reads "but the Commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other company of which Canada is a party." That is the only cause that is applies to; is that it?

A. It only applies to Section (d). I don't have it before me, but if you can provide me with a copy of the Act, my recollection is that the word "shall" in that section—what

I said was that the word "shall" was substituted in that section in 47.

Q. Well, your counsel is going to get you one.

A. Thank you.

Q. Now, let's go back into the history of this for a moment. Do you recall that there was a time prior to
1136 the 1923 amendment of the Canadian Patent Act, when a patent became invalid if goods were imported under it, into Canada?

A. Yes, sir. Prior to 1923, this was the law. It was the law in Canada, I believe, from 1869 to 1923.

Q. And that was changed, was it now by the amendment of 1923?

A. Yes, sir.

Q. Now, do you recall why it was changed in 1923?

A. Yes, sir. I was there, when you say recall. I can only tell you what is generally accepted to be the situation. And it is generally accepted to be the situation that Canada's import provisions were too restrictive to enable Canada to be a member of the Interational Convention. So we then changed our Act to comply—or, rather, not to comply, but to correspond with the 1907 British Act so that we then could become members of the Convention.

Q. Now, when you read the terms of that Convention, you left out in your testimony—I'm talking about—Article 5 (a) (1). You didn't read that. Now, is there any
1137 reason why you left that out?

A. Well, which Convention are you talking about, if I may ask. There is several revisions of the Convention.

Q. I'm talking about the treaty.

A. Well, which treaty? There are several treaties, as you well know.

1138 Q. Well, is the treaty of August 3rd, still in existence?

A. 1948? I'm not aware of the '48 revision. And I

cannot tell you whether that—whether that is the one to which I was referring.

Q. All right. I'm reading from the Convention of the Union of Paris, of March 20th, 1883, for the protection of industrial property, revised at Brussels December 14th, 1900; at Washington June 2nd, 1911; at The Hague November 26, 1925; and at London June 2nd, 1934.

A. Well, I cannot—

Q. Is that what you were referring to this morning?

A. Yes, except the one I had this morning was also revised at Lisbon October 31, 1958.

Q. All right.

A. It contains that in italics. Now, I cannot tell you with assurance whether Canada adhered to the London revision or not. I believe we adhered to those revisions prior to the London revision.

Q. Well, we are going to relieve your mind on that before we get through.

1139 A. Thank you very much.

Q. Article V of the document I am reading from, which is the Official Gazette, published in Washington, United States Patent Office—(a)(1)—do you find such a section in the one that you were reading from this morning?

Mr. Dodds: 5(a)(1)?

The Witness: Yes, I do. Article V (a)(1) I have before me.

By Mr. McConnell:

Q. All right. I'm going to read it to you and I want to know why you omitted reading it this morning:

> "The introduction by the patentee into the country where the patent has been granted of objects manufactured in any of the countries of the union shall not entail forfeiture."

A. The reason I didn't read it is mine doesn't read that way, in the first place.

Q. How does yours read?

A. Mine reads that:

"The importation by the patentee into the country
1140 where the patent has been granted of articles manufactured in any of the countries of the union shall not entail revocation of the patent."

I take it it is the same sense as you read—

Q. Well, you didn't read that either, did you?

A. I didn't read that—I didn't read any of this as I recall. I made certain comments on the convention, as I understood it, as it subsisted in Canada. I didn't read the text at all, as I recall.

Q. All right. Now, this convention which I have been asking you questions about is a treaty between the United States and Canada, is it not?

A. Well, I wouldn't have defined it so.

Q. You don't think it is a treaty?

A. I wouldn't have defined it in the words you used, as being a treaty limited to Canada and the United States, if that was your intent. It is a—

Q. Well, you are going to quibble with me as to whether other people are in it?

1141 A. Well, I'm not quibbling. I'm merely answering your question.

The question, as you put it to me, I interpreted it to be a treaty limited to these two countries. And it is not. It is a treaty which embraces a large number of countries.

Q. Well, I will rephrase it. Is it a country which includes these two countries, Canada and the United States?

A. Oh, yes. Well, particular revisions do. Certain revisions of the International Convention have been agreed to by Canada, and certain revisions of the convention have been agreed to by the United States.

The Court: How about Section 5(a)(1)?

The Witness: I don't know. I cannot answer that.

By Mr. McConnell:

Q. Well, will you go this far with me—that this convention is in the nature of a contract between the United States and Canada and other parties?

A. Well—it involves international obligations. In-
1142 sofar as international obligations are created—

Q. Can't you answer my question?

A. Well, I thought I was. I hadn't finished.

Q. All right. Go ahead.

A. (Continuing.) —that it creates international obligation (b), insofar as those obligations are created, it is a contract of that nature, creating international obligations, one country with the other.

Q. And the countries we are talking about here are the United States and Canada? You understand that?

A. They are two of the countries included in respect of those revisions to which both countries have adhered.

Q. Well, you don't know of any revision over what I have read to you, which you can quote here, do you?

1143 A. I have said that I—there have been revisions in London; there have been revisions in Lisbon, both of which were subsequent to, I believe, what you quote. Certainly the Lisbon one was.

Q. Well, you don't—

A. I'm not suggesting—

Q. You don't know any revision of this language, Article 5(a)(1), do you?

A. I don't even know whether Canada and the United States adhered to that revision, I have told you, Mr. McConnell. I don't know.

Mr. Dodds: It might be helpful if Mr. McConnell would state what date he is reading from. The witness identified

the revision from which he is reading from. It would place it in terms of time.

The Court: I think Mr. McConnell started way out in the 1800's, and 1900, 1924, up to '48. That apparently is the last date—

Mr. McConnell: Your Honor is exactly right. I read it right into the record and, apparently, Counsel didn't listen to it; you did.

1144 The Court: As I understand, the last date you mentioned was '48.

Mr. McConnell: Yes, sir.

The Court: Lisbon was in '58, or something.

The Witness: Lisbon I believe was '58; that's right.

By Mr. McConnell:

Q. Well, have you got the Lisbon Treaty of '58?

A. I have the Lisbon Treaty of '58, October 31, '58.

Q. Were Canada and the United States signatories to that treaty?

A. I don't believe Canada was a signatory to the Lisbon Treaty.

Q. You don't think so?

A. I don't think so.

Q. Were they signatories to the one in 1948, the one I read to you here from the document I am using?

A. Well, I would much prefer if you can tell me the name of it. If it is Brussels, I believe we were.

1145 If it is London, I don't believe we were.

Q. I will very happy to tell you what it is. Revised at Brussels.

A. I believe we did. My recollection is that we did. I can't be positive on it.

Q. Now, in your Patent Act, Section 68(d), there is the caveat which you say is mandatory on the Commissioner, as follows:

"But the Commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party."

Now, would you say that Article 5(a)(1) is such?

A. Provided Canada has adhered to the revision in which that appears; yes, I would.

Q. Well, you just told me they adhered to the one in Brussels, and I read you from the Brussels one.

A. My answer still stands.

The Court: His answer is he thought they adhered to it, but he wasn't sure.

1146 By Mr. McConnell:

Q. Well, you thought it well enough to read from it into the evidence in this case, didn't you?

A. I though well enough of it to read what I thought was the then existing convention—

Q. Where did you get what you got on it? Up in Canada?

A. No. The first time I saw it was when I was in this courtroom.

Q. Somebody else gave it to you?

A. It was handed—I thought that was clear; it was handed to me by Counsel.

Q. Did he tell you what portions to read from?

A. No, sir, he did not.

Q. You made your own selection; is that it?

A. I didn't make a selection. I gave what I thought was a quick analysis of it, if you will recall. I didn't select parts to read from. I gave an analysis of those things that I thought were important.

Q. And you didn't think Article 5(a) (1) was important?

1147 A. Well, it didn't stick out in my mind as one of those that was—

Q. All right. You have answered my question.

A. All right.

Q. Now, getting to this Royal Commission report which you apparently engaged in on behalf of various people, and which your partner engaged in for CRPL, isn't it a fact that you were trying to give CRPL a whitewash at this time?

A. That I was—I was not trying to give a whitewash here—

Q. Well, was your partner?

A. My partner was representing CRPL to establish that they had not committed any illegal acts in Canada.

Q. This was not a judicial tribunal, was it?

A. No. It was a Royal Commission to investigate into the patent laws of Canada.

Q. To see whether or not they should make some recommendations. Were any of their recommendations carried out?

A. Not yet.

Q. When did they make them?

1148 A. The date is here, I believe. You will find it on the cover page, I believe.

Q. Well, I take it it was some time ago?

A. Oh, yes, several years ago.

Q. Nothing has happened.

A. Well, that isn't true. Something has happened.

Q. Well, have they changed any laws?

A. No. But this is being—I'm advised that the Secretary of State's Department is working on a proposed re sion of the Act.

Q. You haven't seen any draft of that, have you?

A. I have not.

The Court: By several years, what do you mean—four. five, six?

The Witness: I'm sorry. I thought I could give your

Honor the exact date when this was submitted to the Minister. I would think it is three or four.

By Mr. McConnell:

Q. Well, that's good enough for me—three or four years—without getting the exact date, or do you want to get the exact date?

1149 A. Well, I would prefer to get it if I can.

Q. All right. You get it.

A. I thought it would be a matter of record. It isn't in this document, and I thought it would be.

The Court: That is the only document you had before you, so you apparently can't get it.

The Witness: That's right.

1150 A. No, I am sorry, I can't give you the exact date.

By Mr. McConnell:

Q. All right, we will try and get along without it, then.

Now, referring to this report which apparently you had something to do with, and your partner, for CRPL, had quite a bit to do with it, apparently—

Mr. Dodds: Your Honor, I object to these characterizations. There has been no testimony that—

The Court: There is no jury in the box, Mr. McConnell. It is not necessary in this case to put it that way.

By the Witness:

A. I thought it was a matter of record on this report. The report was submitted on the 31st day of December, 1959.

By Mr. McConnell:

Q. Approximately four years, five years have gone by. Apparently Mohammed or somebody labored greatly and brought forth nothing to date, is that right?

1151 A. Well, you can characterize it as you see fit. I am told that they are working on it.

Q. In this report, under this heading that you read into evidence this morning, there is a statement that CRPL acted as a central patent licensing agency, and then it gives the names of the five shareholders, Canadian General Electric Company, Canadian Westinghouse Company, Northern Electric Company, Canadian Marconi Company, and Canadian Radio Manufacturing Company.

Now, do you know which ones of those companies manufactured either radio or television sets?

A. I do not.

Q. You don't know that Canadian General Electric Company manufactures radios or televisions?

A. I have no knowledge of their activities. That is to say, I have no personal knowledge of what they are actually making in Canada, and I have only acted for them on an isolated basis on particular subject matters. I am not—

Q. Well, your partner acted for them as their general counsel for many, many years, hasn't
1152 he?

A. Never as their general counsel. He has done work for them on patent matters, I feel certain, but he is not a general practitioner—I assume you are talking about Gowling, and he is not a general practitioner and he is not their general counsel nor, as far as I am aware, has he been.

Q. But he is their patent lawyer. He has represented the pool, hasn't he, throughout the years?

A. I have answered that three or four times, that he has represented CRPL, of course, for a long period of time and represented them at this hearing, that is, the hearing at which CRPL was represented before the Royal Commission.

Q. I show you a document which is introduced here in evidence as Defendant's Exhibit 135, which purports to be a notice to importers, vendors or users of radio and tele-

vision receivers and other electronic equipment stating that—

A. Well, you say you are going to show it to me but I haven't seen it yet.

Q. You will get it in due course. Just be a
1153 little patient.

The Court: He will read it to you and then you can read it to yourself.

The Witness: That is fine. Thank you.

By Mr. McConnell:

Q. This following statement is contained in it:

"Under the provisions of Section 46 of the Canadian Patent Act the owner of a patent and his legal representatives have the exclusive right, privilege and liberty of making, constructing, using and vending to others to be used the patented invention in Canadian Radio Patents Limited, in acordance with the requirements of Section 67, 68 of the Patent Act has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers."

Can you point out on that list of companies those that are members of this pool, the five companies that I have just read to you. See if you find their names on there.

1154 A. Oh, I see. What you would like me to do is compare this list with the list as stated in Page 1.

Q. Correct.

A. Well, I see Canadian Marconi Company; I see Canadian General Electric Company. It is called Limited in one case but Canadian General Electric Company in the other, so I see two of them. I see Canadian Westinghouse Company, that is three, Northern Electric, yes, four. I do not see Canadian Radio Manufacturing Company. That is the four of the five named that I see.

Q. All right.

Now, you told us this morning that you knew what the policy, the licensing policy of CREP was and that, as I understood you to state it, the policy was not to license imports where there was manufacturing in Canada.

A. That is correct.

1155 Q. Now, imports that came in, in the electronics field, would represent competition to the owners of this pool, would it not?

A. Certainly.

Q. No question about it, is there?

A. I would have thought not.

Q. You don't have any antitrust laws up there in Canada, do you?

A. Well, that is not true.

Again, if you wish a straight matter of nomenclature, we don't call it "antitrust," we call it "Combines," and when I spoke of the Combines Act, that is our antitrust legislation, and it is criminal in nature and it is very well developed.

Q. Well, is a conspiracy among manufacturers to exclude competition, would that group of manufacturers be in violation of your law up there?

A. The words of the act would require that it likely operate to the detriment of the company or that there be an undue lessening of competition. In other words, you have put it in terms of—words that are not in accord-
1156 ance with our statutory requirements. There would have to be an undue lessening of competition, or there would have to be more than merely getting together. In other words, they would have to be conspiring to do an unlawful act or doing by unlawful means a lawful act.

Q. I am talking about conspiring to stop competition with these five manufacturers.

A. Well, are you asking me if this is a criminal offense.

Q. Yes.

A. I don't think it is, what they have done, no.

Q. You haven't any law that says you can—that is against your law to conspire to stop competition with these five companies, is that right?

A. Well, what—I am answering your question in the context of the existence of a patent right that is being asserted, and in my opinion the assertion of a patent right is not doing an unlawful thing. And when you use the word "conspire" I am using it in a non-technical sense because, certainly, to assert a patent legitimately in
1157 accordance with the spirit of the Patent Act is not, in my opinion, a criminal act.

Q. In Canada.

A. In Canada.

Q. You don't know whether conspiring by patent holders to stop competition with holders of the patent in manufacturing is or is not a criminal act in the United States?

A. I know nothing of the United States laws. I have trouble enough with my own.

1158 Q. That issue never was considered in any manner, form or suggestion in this hearing that you had before this—

A. That is not true. You will see that reference is made to Section 411 of the Criminal Code which then dealt with the subject matter that you are talking about. It also refers to Section 30 of the Combines Act, and Section 30 of the Combines Act is a section which enables the Attorney General to take civil proceedings to revoke a patent in the event—or cancel an agreement in the event there is an undue lessening in competition. That was considered, and you will see the report did consider this aspect of the matter, or that is that report—

Q. Well, it considered it in the aspect of whether you needed any more legislation, isn't that right?

A. And whether or not there had been any illegal act up to date.

Q. Well, there was nobody on trial up there, was there?

A. No, but that was considered. The report so states. It was considered.

1159 Q. And these recommendations and so forth are written by you, I take it, or—

A. Mr. McConnell, for the third time, they were not written by me.

Q. I know what you said.

A. No, I did not write the report. I did not write—

Q. All right, now, let me get to this statement in your report?

A. Not my report. I thought I had so stated.

Q. Well, the report.

A. Thank you.

Q. (Reading):

"The portfolio in respect of which CRPL had the right to grant licenses consisted of 5,000 patents, and in the absence of a license from CRPL it is doubtful if anyone could sell in Canada a radio or television receiver."

Now, did you consider that subject before you wrote that into the report?

Mr. Dodds: I again object. He said that he never wrote anything in the report.

1160 The Court: Let's make it more semantically correct, Mr. McConnell.

Mr. McConnell: All right.

Pardon me, your Honor.

By Mr. McConnell:

Q. Was that considered?

Mr. McConnell: He was there. I guess that he ought to know.

By the Witness:

A. Of course they considered it. They have written it. They considered that aspect of the matter and they referred to it in the report.

By Mr. McConnell:

Q. And they had before them the benefit of whatever CRPL had submitted, is that right?

A. Of course.

Q. Now, do you know what proportion of the patents in that Pool were owned by General Electric?

A. No knowledge at all.

Q. You don't know how many of those patents belong to GE or Westinghouse?

A. No, I do not.

1161 Q. Or RCA?

A. I do not.

Q. Well, do you consider that a company like Zenith Radio exporting its sets into Canada is competition for the members of this pool?

A. You mean the sale of the sets in Canada? Is that—

Q. Do you think that is competition for the owners of this pool?

A. Well, I have already told you that I don't know the nature of their—the full scope of their activities. You have shown me their licensees. I am now assuming that they are manufacturing and selling sets and, certainly, if they are manufacturing and selling radio sets in Canada, your exportation into Canada is competition.

1162 Q. So this report then says that in the face of five thousand patents it would—

"—it is doubtful if anyone could sell in Canada a radio or television receiver."

Is that right?

A. That is what it says.

Q. And that would include the Zenith Radio Company, wouldn't it?

A. It would include anyone as at that time who sought to sell in Canada radio receiving sets, that is right.

Q. And you have told us that if Zenith is a competitor, if it doesn't manufacture, if there are manufacturers in Canada, then this pool will not license Zenith to import anything into Canada, isn't that right?

A. Will not license—they will not license the importation into Canada in respect of the type and kind of television set or radio set that is being made in Canada, that is correct.

The Court: When we say the type or kind, we are talking about home radio and home television sets.

1163 The Witness: Yes, this would include home radio and television sets, that is correct.

The Court: All right, I ust want to be sure that this wasn't the exception that is in there.

The Witness: No, this would include whatever is being made in Canada including that type and that kind of set.

The Court: All right.

By Mr. McConnell:

Q. Then you say, "It was stated—" or you object to that word.

The report says:

> "It was stated to be the policy of CRPL to enforce its patent rights against any person who sells in Canada an imported radio or television receiver which infringes any one or more of the patents in its portfolio except in the limited area where permission has been granted to import the apparatus which CRPL agrees is not of a type or kind made in this country."

1164 Is that what they arrived at?

A. It so states.

Q. The report?

A. The report so states.

Q. And that was CRPL's statement, wasn't it?

A. That is, CRPL made that submission.

Q. Made that submission, that that is what they were doing.

A. That is correct.

Q. Now, under that Zenith couldn't get a license to import at all unless they manufactured up there, could they?

A. Well, it depends what they sought to import. If they sought to import a small television set, by way of example, less than eight-inch, I presume they could.

Q. No, I am talking about seeking to import something that is competitive with the members of this Pool.

A. And something that is being made in Canada?

Q. Yes, by the Pool.

A. Then their stated policy is that they would not 1165 grant a license to import.

Q. Now, it says here:

> "CRPL expressed concern about the compulsory licensing provisions of the Canadian Patent Act in the event that it should grant a license to any person to import in circumstances where any manufacturing was carried out in Canada under a patent included in the portfolio which it administered. This concern did not relate to the grant of a non-exclusive compulsory license by the Commissioner of Patents on the payment of a reasonable royalty. CRPL was itself prepared to grant a license of such a nature."

Did they represent to that Commission that they were not concerned about that sort of a license?

A. They might have, because the report so states. I cannot—I was not present when they made their report or

when they made their presentation, but I did certainly
1166 read their presentation and I have to say to you that I expect that this is what they said.

Q. Now, that is one of the risks that you said this morning that a patentee would assume if he licensed importation.

A. I was asked to advise my opinion, and in my opinion, I say there is a risk in that if you leave yourself open for an application for compulsory license you then allow an independent tribunal, if you will, the Commissioner of Patents, to fix the royalty. I would prefer to be in the position to negotiate that royalty myself rather than have the tribunal fix it in the situation which arises.

Q. All right. That is your concern.

A. That is correct, that is my concern. That is what I was asked.

Q. But I am asking you now if the matter about which CRPL represented they had no concern was the thing you were expressing concern about, namely, the compulsory licensing of a non-exclusory license by the Commission.

A. That is right. You mean where we are dealing
1167 with the same subect matter.

Q. Yes.

A. Yes, we were. In other words—

1168 Q. Dealing with that subect matter before the Commission, at least, CRPL represented that they were not concerned about that.

A. So I understand from that report, that is correct.

Q. So this concern that you brought into this hearing is some concern of your own?

A. It is my opinion.

Q. Yes.

A. It is the way in which I would advise my client, and this is what I was asked.

Q. Now, what they were afraid of, apparently, was

something which was equivalent to a forfeiture of the patent, a revocation of it, is that right?

A. That is one of the things. The other was the exclusive license. They are put in that order, the exclusive license and then revocation, as I recall it.

Q. And the Commission says, in view of all the law up there and all you have talked about here, isn't this their opinion:

"We do not believe that it is likely that the Commissioner of Patents would revoke a patent where
1169 the abuse was based on the fact that a license had been granted to import."

Isn't that the opinion of this Commission?

A. So it states insofar as revocation is concerned.

Q. Yes, and that is different from yours, isn't it? You said that revocation is one of the risks.

A. Of course, and I don't think they preclude it from being a possibility.

Q. No, but they say, "We do not believe that it is likely."

A. May I finish? They have said, and I so stated, that it was unlikely. Now, there were three risks, the nonexclusive, the exclusive and the revocation, and I thought I made it clear that in my opinion the revocation was unlikely. I thought that this was their views—this was their view as well. Now, I could be incorrect, but this is my recollection.

Q. Now, let me ask you this, you looked up the law on this subject, I take it.

A. Looked up the law on what subject?

1170 Q. On the subject of your testimony here in this court.

A. Well—

Q. On this Patent Act, and its sanctions and its caveats, and so forth.

A. I had hoped that I was familiar with it.

Q. All right.

Now, let me ask you this: Has any case in Canada revoked a license for importation?

A. No, I so stated this morning.

Q. Well, that isn't very much of a risk, then, is it?

A. The risk is there. When it is invoked, I don't know, but as you well know, Mr. McConnell, the laws that are present and exist can be invoked at any time. Just because they haven't been is no assurance that they are not going to be. I mean, it is there. It is a risk. I can't ignore it.

Q. Do you know of any instance wherein the Commissioner of Patents has invoked this Canadian Patent Law either for a compulsory non-exclusive license, for a compulsory exclusive license, or for a revocation of a
1171 license against RCA, General Electric, Westinghouse, or the Telephone Company?

Mr. Dodds: Your Honor, I object to the form of the question.

By Mr. McConnell:

Q. For permitting—

Mr. McConnell: Just let me finish, will you.

By Mr. McConnell:

Q. (Continuing.) —for permitting their patent to be used to import goods into Canada.

Mr. Dodds: Your Honor, I object to the form of the question because the Act does not permit the Commissioner of Patents to institute any sort of proceedings. He merely hears it upon the application of some other party.

The Court: The objection is overruled.

By the Witness:

A. I know of no compulsory license proceeding that has been taken against any of the companies that you mentioned. I am not aware of it.

By Mr. McConnell:

1172 Q. Or any of those three risks that you talked about this morning, none of those have been invoked, have they, by anybody?

A. Well, that is a different question. I am not sure of that. I can't say that—

Q. I didn't ask you that, I asked you whether you knew of it.

A. Mr. McConnell, may I finish, please.

Q. Go ahead.

A. —the compulsory license provisions constitute a spur to negotiated licenses. Now, I don't know and I can't tell you whether anybody has gone to any of these companies with a view to saying that by virtue of the existence of these sections you better negotiate with us, but this is the normal course. The normal course is, first, to seek to negotiate and if you can't negotiate then invoke these provisions, but the provisions are invoked for the purpose of negotiating a license nonetheless; so that I can't answer your question. I don't know whether anyone has sought to invoke them in that sense.

Q. All I asked you was whether you knew of any
1173 instance where anybody had invoked these provisions.

A. I just told you that I can't answer that.

Q. That is all I asked you.

A. I can't answer that.

1174 Q. Well, you can answer it. You told us you didn't know of any, didn't you?

The Court: Not in regard to all three, just in regard to the one.

The Witness: It would be in regard to the first one, quite right, your Honor. It would be in respect to a negotiated nonexclusive license which would not mean that it would ever come before the Commissioner of Patents. It would therefore not be public.

By Mr. McConnell:

Q. How about any of the other three that you talked about as risks? Do you know of any time that anybody has invoked any of those procedures?

A. I can't point to any, no. That doesn't mean that they haven't sought to use them for the purpose of negotiation.

Q. I didn't ask you that, I just asked you if you knew of any.

A. No, I don't.

Q. Now, this report goes on:

> "If the abuse is importation on the payment of a
> 1175 royalty, an abuse of this nature would not be remedies by revoking the patent and permitting importation by anyone and without royalty obligation. Such a course of action would not cure the mischief."

Now, what we are talking about here is a license to import on the payment of a royalty, isn't it?

A. Well, I don't know what we are talking about here.

Q. Aren't we talking about the refusal of CRPL to grant a license on the payment of a royalty to import sets into Canada?

A. Mr. McConnell, I am here to answer your questions. I do not know what the issues are in this case. I don't know what we are here to discuss.

Q. Well, you told us that you knew that CRPL would not grant such a license, didn't you?

A. Well, I have told you that CRPL will not grant a license where there is manufacture of the particular article in question. I have so stated, that is right.

Q. And they won't grant a license to import on
1176 payment of a royalty, will they?

A. In certain conditions. In those conditions—

Q. Well, you named the conditions.

A. That is right, but in those conditions they will not grant a license to import, where there is manufacture in Canada.

Q. Well, this Commission didn't think that that situation would justify any revocation, isn't that right?

A. That isn't what they said. They said they didn't think it would be a remedy that would be given; whether it justified it or not, they did not deal with it in the words that you used to me. They did not deal with it in terms of justification, they dealt with it in terms of it being a likelihood in terms of a remedy that would be given.

Q. Now, this Commission said further:

"The result flowing from the recommendation of the Commission is that a company holding a patent portfolio will have the right to grant a license to import in a proper case."

1177 Did they recommend any legislation along that line?

A. Yes, sir, they did.

Q. What did they recommend?

A. They recommended that Canada should adhere to the Lisbon Convention, and that by adhering to the Lisbon Convention that there would then be a provision effected or legislation would be passed in Canada implementing that adherence whereby no exclusive license would be granted on a compulsory license application.

Q. Well, under their present Patent Act—

A. Who is "they"?

Q. You don't know who I am talking about?

A. Well, I want to be certain.

Q. Under the Canadian Patent Act, the one which we have been identifying here in evidence in this case, they had to conform to the Conventions and treaties, and the Commissioner had to, didn't he?

A. Well, these are two separate questions. There are occasions when domestic legislation is not in conformity

with the convention. The disconformity has not been
1178 such as to force the particular country out. It is true that there is a moral obligation on the country to bring their legislation into conformity. I am saying that in answer to your first question.

Certainly as to your second question, any order of the Commissioner, if made contrary to a provision in the convention, it would be ineffective.

Q. And you agreed with me that the convention did provide that the introduction by the patentee into the country where the patent has been granted of objects manufactured in any of the countries of the union shall not entail forfeiture. You agreed with me on that, didn't you?

A. I agreed with you that a particular revision that you referred to, and that you read those words to me—and that you read those words to me, and I also agreed that words of like import were in the 1958 revision that I read, but I did not agree that Canada—

Q. Well—

A. I said I did not know whether Canada had adhered to the particular convention where those words appear. I just don't know.

1179 Q. Well, suppose they did. Assume they did adhere. Would that make any difference in your opinion?

A. Well, if they adhered then, of course, the Commissioner couldn't make an effective order which would be contrary to that provision.

Q. That is right. I am reading now from a document which is in evidence here, which is an allegation in a suit brought by the United States Government, one of the signatories to this convention which we have been talking about:

"Beginning on or about November 15, 1926, and continuing thereafter to the date of the filing of this Com-

plaint, the defendants, the co-conspirators and other persons to the plaintiff unknown, have engaged in an unlawful combination and conspiracy in restraint of the aforesaid foreign commerce in home entertainment apparatus in violation of Section 1 of the Sherman Act.

"The defendants are continuing and threaten to and
1180 will continue the said offense unless the relief hereinafter prayed for in this complaint is granted.

"The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and co-conspirators to prevent, hinder and preclude the importation into Canada from the United States of home entertainment apparatus which could compete in the Canadian market with home entertainment apparatus manufactured in Canada by Canadian companies, including the Canadian subsidiaries or affiliates of each of the defendants."

Then they name these companies:

"Canadian GE, Canadian Westinghouse, Northern, Canadian Marconi, and Standard, caused the incorporation of CRPL and caused all outstanding shares of CRPL to be issued to themselves, and on or about January 19, 1927, jointly authorized CRPL to sub-license
1181 Canadian patents owned or controlled by each of them, such licenses to be issued only upon the unanimous consent on the part of all the shareholders of CRPL.

"Canadian GE, Canadian Westinghouse, Northern, Canadian Marconi, Standard and Rogers-Majestic and Canadian Philips hereinafter continued to authorize CRPL to sub-lease Canadian patents owned or controlled by each of them to at least December 6, 1957. By agreement and understanding effective to the date of the filing of this complaint GE since at least 1927 has authorized and continued to authorize Canadian GE to grant sub-licensing rights."

And that names the other companies that grant sub-licensing rights to CRPL, including RCA, and says:

"Also, by an agreement effective to the date of the filing of this complaint Hazeltine granted to CRPL an exclusive license with a right to sub-license under
1182 the Hazeltine Canadian patents. CRPL acquired the Canadian counterpart patents of the United States Parker patents. Since 1927 CRPL has issued package licenses from time to time at a fixed and uniform royalty rate to Canadian companies engaged in the manufacture, distribution and sale of home entertainment apparatus. These said package licenses issued by CRPL have required the licensee to manufacture only in Canada and to refrain from importing home entertainment apparatus manufactured in the United States. CRPL has refused to license the import into Canada of home entertainment apparatus manufactured in the United States. CRPL has threatened to institute and has instituted patent infringement suits against dealers undertaking to sell in Canada home entertainment apparatus manufactured in the United States."

Is it your opinion that your Canadian Patent Act authorizes the refusal of license under that sort of conduct
1183 set forth in that complaint?

A. I am sorry, I would have to study that in much more detail to know the—to answer your question. There is so much in there, Mr. McConnell, that I am not going to answer off the cuff on a matter of that kind. I have given you my opinion as to what our Canadian Patent Act does, and you will have to assess it in relation to what has been said in that report. I would want to study a matter of that kind.

1184 Q. All right, do you consider it an abuse of your patent law for a group of manufacturers who combine

together to refuse to license for import into Canada the products of an American company competing with them?

A. Mr. McConnell, I don't want to get into an international dispute, but I have to say to you that I do not think it an illegitimate aspiration of my country to consider that we should develop our manufacture.

Q. By conspiracy?

A. I didn't say conspiracy, I said to develop manufacturing. It is the stated policy of the Canadian Patent Act that this be done.

Now, I don't have to tell you that in the absence of some degree of—or some ability to license a group of patents it is unlikely that we would ever have had any Canadian manufacture, because there would have been too many patent suits against too many people; so to bring this group of patents together to enable them to be licensed to any one who wished to manufacture is not, in my opinion,

a conspiracy. It is the use of patents for a legitimate
1185 object, a stated object of our Patent Act to manufacture in Canada.

Now, as long as this group of patents is made available for manufacture in Canada, I personally, as a Canadian, see nothing wrong in attempting to further that legitimate object, and that if it entails, if it entails, using the Canadian court and the Canadian patents to stop importation of United States sets, I cannot see anything wrong, as a Canadian, in that being done.

Q. All right, you state a different case than the one I put to you.

A. Well, as I saw it, it was a situation you were putting to me.

Q. The case I am putting to you is, assume Canadian companies, the counterparts of American companies, engage in a conspiracy in restraint of trade in which they use these patents in the manner as shown here by refusing

importation, would you say that was an abuse of the importation provisions of the patent laws?

A. Well, let me say this to you—

1186 Q. Can't you answer my question?

A. Well, no, I can't, because you have got two different thoughts in there, and I am going to say to you that you have, in my humble opinion, two different concepts, and I want to keep these concepts clear.

Q. Well, I would like to see, first, if you can answer my question.

Mr. Connell: Will you please read the question to the witness?

The Court: I think that he said he couldn't.

The Witness: I can't answer it in those terms. I will seek to give you an answer.

By Mr. McConnell:

Q. If you can't answer my question, I will give you another one.

Is there anything in the patent laws in Canada which justifies Canadian companies from entering into a conspiracy with American companies to violate the antitrust laws of the United States?

A. Well, let me say this to you—

1187 Q. Can't you answer that yes or no?

A. Well, may I answer it?

As long as there is a conspiracy, I assume, and I have to assume on my terms the definition, because if I am talking conspiracy in different terms than you are, I want to be certain I am not answering at cross purposes.

Now, a conspiracy under—

Q. Well, now, let me define "conspiracy" for you.

A. May I finish?

Q. So that you can tell what I am talking about.

The Court: Let him finish his answer and if it is not

responsive you can strike it, Mr. McConnell, but he is entitled to answer your question.

By Mr. McConnell:

Q. All right, go ahead.

By the Witness:

A. I am answering your question on the basis that a conspiracy is by very definition the doing of an unlaw-
1188 ful act, perhaps by legal means, or the doing of a lawful act by illegal means. Now, you have answered your question by saying that there is a conspiracy. As long as there is a conspiracy, there is an illegality, but you are assuming the existence of a conspiracy in your question to me. Now, certainly if there is a conspiracy the doing of the illegal act or the doing of the illegal act by illegal means, then the answer to your question is that it is wrongful in our country.

Q. All right.

A. But there must be the illegality.

Q. And if it is wrongful, then there is nothing in the Patent Act which proscribes the import of sets if it is kept out by this illegal means, is there?

A. If there is an illegal means under—if an illegal act has taken place then, of course, there are sanctions for the illegality in Canada.

1189 By Mr. McConnell:

Q. I have forgotten now whether you admitted that you knew that following this antitrust case, General Electric, RCA, Westinghouse and the telephone company directed this pool to license their patents for import from the United States?

A. I didn't say anything, because I wasn't asked. But I have heard evidence this morning to this effect. And it is generally known that there were steps taken by certain

companies—the companies I do not know the details of—to enable importation to take place in favor of Zenith. This is generally known in the profession.

Beyond the general knowledge, I have no specific knowledge.

Q. You didn't know that that was occasioned because they were entering into a consent decree under the anti-trust laws?

A. I know that a consent decree has been entered into by certain companies in the United States as a result of action taken by your Attorney General. I do know that such decrees—that there are decrees of this nature.
1190 I do not know the details. I did not represent any of the Canadian companies.

Q. I think you said one of the risks that you were worried about, in your testimony this morning, of the three great risks, was the compulsory licensing?

A. Well, the three risks are under the general head of compulsory licensing, yes.

Q. Well, it was a compulsory exclusive license that you thought—

A. That was the second of the two risks; that is right.

Q. Now, what are the conditions under which compulsory exclusive licenses can be given?

A. Well, the ordinary situation that arises where an exclusive license would be given, in my opiion is where the capital investment was of such a magnitude or of such a nature that the Commissioner would consider that it was in the public interest to grant an exclusive license so that that capital, risk capital would be undertaken. And if it could be established that the enterprise would not
1191 be undertaken in the absence of an exclusive position, and that an abuse had taken place, then if is my position the Commissioner would grant an exclusive license.

Q. Now, that is under 68(b), is it not?

A. That is right—

Q. Have you got the Act there before you?

A. I have it here. That is the authorization of an exclusive license. That is right.

Q. All right. Now, (b) says:

"If the Commissioner is satisfied that the invention is not being worked on a commercial scale within Canada."

Now, there was a definition of commercial scale, wasn't there?

A. There is a definition under Section 2 of what is working on a commercial scale. It must be in a definite—

Q. Let's read it so we will have it before us:

"2(j) Work on a commercial scale means the manufacture of the article or the carrying on of the process described in claim, in specification for a patent in or 1192 by means of a definite and substantial establishment or organization and on a scale that is adequate and reasonable under the circumstances."

Now, I showed you here a moment ago a notice—

A. I have it.

Q. You have it—where all those companies are licensed and manufacturing, according to the notice. Would that be a commercial working of the patent?

A. If—well, any manufacture in Canada would be working in Canada. Manufacture and sale in Canada is working in Canada.

Q. Well, you have a notice there coming from the Pool saying that all those licenses are working their patents by manufacturing.

A. Well, Mr. McConnell, there is nothing here giving the magnitude of their manufacture and sale.

Now, one must compare the magnitude of manufacture

and sale in relation to the magnitude of importation before you can determine whether or not there has been
1193 adequate working on a commercial scale. But, certainly, any manufacture in Canada is some working in Canada.

1194 Q. Here is a statement which is made from the Pool in this document which is in evidence here. This is Defendant's Exhibit No. 138.

"The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms."

Does that constitute a working on a commercial scale within this definition 2(j), assuming it is true?

A. Well, that notice constitutes nothing.

Q. I know. But I am assuming it is true.

A. Well, then, certainly if they are manufacturing—assuming it is true, certainly they are working on a commercial scale in Canada. If this is what they say they are doing, and they are doing it, of course, it is working on a commercial scale.

Q. It constitutes all the manufacturers of practically all the electronic equipment in Canada.

A. I don't know that.

Q. You don't know that?

1195 A. No. But I would expect they are the largest ones. The ones that I looked at are certainly those that enjoy a favorable reputation in Canada. I would expect that if they are working on a commercial scale in Canada, they are working on a substantial basis.

Q. So the first condition, then, to this exclusive compulsory license is, "If the Commissioner is satisfied that the invention is not being worked on a commercial scale within Canada"?

A. Now, you have changed your concept, Mr. McConnell. Certainly the notice is dealing with some subject matter. There is nothing to indicate to me that there is an identity of the subject matter in the notice, and the particular invention that may be involved in this section. I don't know.

Q. Well, let's assume that they are.

A. Well, assume they are. If they are working on a commercial scale in Canada, then, of course, there would less likely be an exclusive license.

Q. Then we can forget about (b), can't we, because the first thing he has to find is to satify that the inven-
1196 tion is not being worked on a commercial scale.

A. If it is being worked on a commercial scale in Canada, then, certainly the risk in relation to an exclusive license is minimized.

Q. It is de minimus, isn't it?

A. I would have to know all the facts before I would say anything is de minimus. It is certainly minimized in principle. Whether it is de minimus, I would have to look at an individual case to see the facts of that case. I would have to know the figures, and then I would say whether it is de minimus. But certainly it is minimized.

Q. Let me ask you, if you were a pool representing manufacturers who are going to be met with the competition of the Zenith Radio in the home receiver field, would you feel that you had an unbiased view of how you were going to decide that question?

A. Do you mean if I am a party to a—

Q. Yes.

A. If I am a party, I have a point of view, certainly.

1197 Mr. McConnell: Certainly. I have no further questions.

The Court: Anything, Mr. Dodds?

Mr. Dodds: I have a couple.

Redirect Examination by Mr. Dodds.

Q. Mr. Henderson, to your knowledge, under Canadian law, is a treaty self-executing insofar as internal rights are affected?

A. Definitely not. An internal—this has geen clearly established in Canada that a treaty other than, of course, a treaty of peace—a treaty does not create civil rights among citizens in the country. It must be implemented by legislation.

Q. You described the Combines Act. In your opinion, does that proscribe combinations restricting competition among Canadian manufacturers, or competition between Canadian manufacturers on one hand, and importers on the other, or both?

A. Well, again, if it is using—one must look at what is being sought to be done.

1198 If it is being done to monopolize, if there is being an undue restraint of trade with a view to monopoly, without—this could give rise—or there is price-fixing or something of this nature, in a restraint of trade, this could give rise to an illegality.

But where there is—there is nothing that has happened in our Combines Act which, in my opinion, creates an illegality where manufacturers get together and put their patents in one single entity, and, then make those available to anyone who wishes to manufacture in the country. In other words, if these patents are available at a reasonable price, I do not think any change in our Combines Act has changed the position that has been made—that has been reported in our Royal Commission report.

1199 Q. Would the sale of radio and television receivers in Canada, as receivers manufactured in the United States—you might say, for example, Zenith receivers—would that constitute competition with Canadian manufacturers who are not members of CRPL?

A. Certainly.

Q. Do you know of any action within recent years bruoght by the Attorney General of Canada seeking revocation of a patent?

A. Well, there was I sought to—or a petition that I launched in the late '40's in the optical field, where I filed a petition, as I recall, because the licenses weren't being granted on reasonable terms.

We did this on behalf of the Attorney General. Now, the Attornye General isn't itself interested in a compulsory license. So with a view to giving relief that would be effected, we asked for revocation. That did not go to court. It did not proceed.

The matter that was sought to be changed was changed and, therefore, that application did not proceed. But I believe it was filed. I am speaking from long memory.
1200 I haven't checked it. I believe that was filed. Certainly I advised that it be filed.

Mr. Dodds: No further questions.

The Court: Anything further, Mr. McConnell?

Mr. McConnell: Yes.

The Court: Maybe we better take a recess.

Mr. McConnell: All right.

(A short recess was taken, after which the following further proceedings were had herein:)

Recross Examination by Mr. McConnell.

Q. Now, calling your attention again to 68 (d), this language "but the Commissioner shall make no order for revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party."—Now, that is legislation, isn't it?

A. That is correct.

1201 Q. And you told Mr. Dodds that the treaty must be implemented by legislation. Doesn't that implement your treaty?

A. That doesn't implement a treaty. But what it does do is, it provides that the Commissioner cannot do something which is contrary to the treaty. Now, this may have the same effect. But what I am saying to you is, it puts a prescription insofar as the—upon the Commissioner insofar as he may act. It puts a limitation on his act.

Q. In other words, you have to go back to the treaty every time, and see whether he has acted against the perview and scope of that treaty?

A. That is correct.

Mr. McConnell: I have no further questions.

Mr. Dodds: No further questions.

The Court: Counsel, do you have in Canada any McConnell-type barristers practicing before the Queen's court?

The Witness: Yes, sir, I am one.

1202 The Court: You survived very well.

The Witness: Thank you, sir.

(Witness was excused.)

Mr. Dodds: I should like—first of all, your Honor, I think I failed formally to offer in evidence the Exhibits in the binder which I identified—most of them were by stipulation with the exception, I believe, of some that the witness identified. So I hereby offer them in evidence.

The Court: They have been read in evidence, so they might as well be received. They may be received.

Mr. Dodds: There is one additional item that has just come to my attention, which I should like to offer in evidence, and that is the published Annual Report of the Zenith Radio Corporation for 1962, which includes this statement on page 3:

"Profits of Zenith Radio Corporation of Canada Limited were again affected as a result of curbs instituted by the Canadian government. Its action in es-
1203 tablishing an exchange ratio which further discounted the Canadian dollar in relation to the U. S. dollar, and the imposition of additional tariffs presented serious obstacles to the Canadian operation."

I would like to offer that in evidence as Exhibit PL 62.

1204 The Court: It may be received.

(The said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT NO. 62.)

Mr. Dodds: I should like to call as the next witness Mr. Stevenson of Zenith whom, you may recall, produced rather some large volume of figures the other day of which I asked an opportunity to look through.

WILLIS STEVENSON, recalled as an adverse witness by the Plaintiff and Counter-Defendant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Stevenson, what was your accounting education and experience?

A. I was graduated from the University of Illinois in 1938 with a Bachelor of Science in Accounting with honors. I worked with the public accounting firm of Price Waterhouse & Company in Chicago from 1938 to 1949, with the exception of four years in Service. And I worked
1205 with Arthur Andersen & Company in the Chicago office from 1950 to 1952. Since 1952, I have been with Zenith Radio Coroporation.

Q. As between Zenith Radio Corporation and, I believe,

a subsidiary, Zenith Sales Corporation, who carries the inventory of finished products such as radio and television receivers?

A. The unshipped products are carried by Zenith Radio Corporation.

Q. And the Zenith Sales Corporation has no inventory?

A. That's right.

Q. Now, will you turn to what I believe was a summary sheet, Exhibit 218.

Mr. McConnell: 220.

Mr. Dodds: I found it simplified my consideration—I numbered these pages consecutively. I guess the only way to compare it—this is the sheet entitled Zenith Radio Corp., Zenith Sales Corp., unit and dollar sales.

By the Witness:

A. All right. I have it.

By Mr. Dodds:

1206 Q. I am sorry. I guess that's not Exhibit 218. The way the papers were handed to me, I can't tell where 218 begins and ends.

A. I have the schedule you referred to.

Q. All right. Now, on Sheet 218, Exhibit 218, for the year 1962—maybe I should ask, first, with respect to Exhibit 218, do these figures represent factory shipments, I understand?

A. Yes.

Q. Now, on the other sheet that I identified—Zenith Radio Corp., Zenith Sales Corp., unit and dollar sales—that represents sales. Now, is that something different than shipments?

A. I thought this was the schedule you were referring to when you asked the first question. This schedule, unit and dollar sales, Zenith Radio Corporation and Zenith

Sales Corporation, represents shipments by the Zenith Radio Corporation and Zenith Sales Corporation.

Q. All right. Now, then, look for the year 1962 on this last sheet that you were referring to, domestic units for 1962. It gives the number 1,104,020. Do you find that?

A. Yes, I do.

1207 Q. Then, on 218, for 1962—

The Court: Will you let him know what 218 is.

By Mr. Dodds:

Q. Do you have 218? This is the Zenith share of domestic market.

A. Yes, sir.

Q. For 1962, it shows Zenith shipments of 1,104,967. Now, what accounts for the discrepancy between those two numbers?

A. Let me find this schedule. I don't know the reason for this discrepancy of about seven or eight hundred sets —about 900 sets.

Q. And if you refer on those same two sheets to the unit sales for 1960, on the Zenith Radio, Zenith sales sheet, I find 996,966.

A. Yes.

Q. And on the other sheet, I find 997,007.

A. Yes.

Q. Do you have a way of accounting for that discrepancy?

A. No, I can't account for the 41-set discrepancy.

1208 Q. Now, do you know, Mr. Stevenson, whether or not the Zenith receivers which are made for export to Canada come off the same production line as the U. S. sets?

A. I am not familiar enough with that to answer that question directly.

Q. Well, from an accounting standpoint, do you have

separate accounts for the sets that come off that are going to be shipped to Canada, and those that are going to be sold in the United States?

A. Yes, we do.

Q. But you don't know whether they come off the same production line?

A. No, sir.

Q. Now, at page 782 of the transcript, you said:

"I used reports"—

The question was:

"Now, will you tell us what documents you used in making such a computation?"

You said.

"I used reports prepared from the records of the 1209 company, prepared within the financial division, to show profits by production lines and by other divisions within the production lines."

Do you remember that testimony?

A. I don't remember that specifically.

Q. But you stand by it?

A. Yes.

Q. Well, what do you mean by "divisions within production lines"?

A. I don't think it is production lines. That's what threw me off. Product lines is, I believe, the term I used. Product lines is television, radio, hi-fi, and stereo, and color television. Those are the product lines that I was referring to.

The Court: Do you want to correct your testimony, then, to read products lines instead of production lines?

The Witness: Yes, product lines instead of production lines.

Mr. Dodds: Well, that threw me too.

The Court: All right.

1210 By Mr. Dodds:

Q. But if you prepared these returns to show profits by production lines, wouldn't you have to know what you are talking about, if you were talking about sets for Canada, and you worked on the production line? Wouldn't you have to know that the sets you were computing costs on came off this line, or the same line as some other equipment?

A. Well, we compute a standard cost for each product before it is put into process. And the standard cost for a Canadian set is different that the standard cost for a domestic set.

Q. Do you mean—I'm sorry. Continue.

A. In costing the sales that we made to Canada, we used the standard cost of sets which apply to Canadian production. Whether these come off of one line or another is not important. It is important—the thing is the standard cost of the sets as they have been precomputed.

Q. You say precomputed, before they go into production? Is that what I understood you to say?

A. Yes.

1211 Q. So these aren't actual cost figures—aren't actual realized cost figures then at all, are they?

A. Yes, they are, because any variance from that standard cost during the production cycle is spread to the set produced during the period in which they are produced.

Q. Well, I still don't quite understand that. If these standard costs are precomputed, and you say these are standard costs, how can they include actual costs?

A. Well, if you will go to another schedule within here, I will explain it to you.

Q. Yes.

A. It is a schedule called Summary of Profit Percentages applying to additional sales volume of Canada, U. K., and Australia.

Q. May I look. It is very hard to follow these diffeernt sheets.

Yes. Now, I have this. Now, will you explain?

A. The standard cost of Canadian sets for the material was this percentage of our sales dollar. To the ex-
1212 tent that the actual cost varied from the standard costs they have been taken up in the additional items on this profit and loss statement. For instance, if we had purchased material at other than the standard cost for this material, that variance has been taken up in the profit and loss under material price variance. And it therefore adjusts standard cost to actual cost.

1213 Q. Was this done after the end of the year?

A. It is done concurrently from month to month.

Q. Well, now, for example, the labor component, would that be the same for the Canadian sets as for the United States sets?

A. It probably is not, because there are some adjustments that are—some changes that are made in the domestic sets to comply with Canadian underwriters' requirements, and to the extent that adds labor, that added labor would be included in the labor content of these sets.

Q. Is that what you mean here by labor adjustment from standard plus 03, is that what you are talking about?

A. That could be part of it.

Q. What could be the rest of it?

A. Well, there are several labor accounts here, as you will note, labor standard, labor adjustment from standard, labor variance and labor—well, those three accounts would include any adjustment of the labor content for the
1214 Canadian portion.

Q. But outside of the variations due to the necessity of complying with the Canadian underwriters, the cost would be the standard, then, is that so?

A. That is true.

Q. Well, then, wouldn't that mean they would have to come off the same lines?

A. Not necessarily.

Q. You mean all the lines would have the same costs?

A. No. I say they wouldn't necessarily have to come off of the same line. There might be a line just for Canadian sets, or there might be lines doing both Canadian and domestic sets and later adjusted after they had come off the end of the line.

Q. Do the sales figures which you have given include stereo?

A. They do not.

Q. Do they include FM stereo receivers?

A. They do.

Q. All right.

Now, let's get to a question of definitions: How
1215 do you define "a fixed cost"? I think in several of these schedules you have used the terms "fixed" and "variable". Now, I just want to get on the same track.

A. I would define a "fixed cost" as one that would not increase with an additional volume of production.

Q. And how would you then definie "variable cost"?

A. A "variable cost" I would define as one that increases proportionately with an increase in production.

Q. So that any cost figure which varies directly with production would be a variable cost, is that right?

A. That is right.

1216 The Court: You said that a "fixed cost" would be one that did not vary with increased production?

The Witness: Yes, sir.

The Court: Would it also include one that did not vary with decreased production?

The Witness: Yes, sir.

The Court: So regardless of whether it is an increase or a decrease.

The Witness: Yes, sir.

The Court: All right.

By Mr. Dodds:

Q. This summary sheet that we were just looking at, Mr. Stevenson, to those figures taken from these annual sheets, Zenith Radio Corp. parent only, 1960, 1961 and so forth, is it just a—

A. What was your question.

Q. Were the figures on this sheet, summary of profit percentages and so forth, was that taken from these annual sheets?

A. Yes, they were.

Q. For the respective years?

A. Yes.

1217 Q. Well, now, let's consider again the 1962 which Zenith Radio Corp., parent only, 1962 finals—

A. Yes, I have the schedule.

Q. Now, these cost figures in dollars, how are those segregated from costs with respect to all other products and with respect to each other, for example, as between monochrome television and radio?

A. Well, it varies differently with each of the items that shows on this schedule.

Q. Well, take particularly what you might call an item such as advertising; how do you determine the allocation between, say, television and radio in these figures?

A. Well, in the case of advertising there is one element included there which is allocated on the basis of the product shipped, and that is co-op, advertising content.

The Court: What kind of—

The Witness: Co-op., cooperative advertising. At Zenith there is a specific amount of co-op. advertising al-

1218 lowed to a distributor with each set that he receives, and the provision of co-op. advertising that shows on this schedule included in advertising is allocated on that

basis. The balance of advertising expense is allocated on the sales dollar within the Canadian group of products.

By Mr. Dodds:

Q. Well, now, these figures, and particularly these percentages, are those composites for all types of TV and all types of radio?

A. Yes, they are.

Q. Now, would not the profit margins be greater on some types than on others?

A. Yes, it would be.

Q. Well, now, at page 784 of the transcript you were asked:

"Now, what I am getting at is, how do you determine the profit? You must take cost figures and deduct that in some way from what you received. Is that the way you do it?

"A. Yes, the profits are determined by relating
1219 to every unit sold the costs which apply to that unit."

Now, is that strictly true if these costs are averaged over all types of television sets? It is not unit by unit then, is it?

A. It is unit by unit—

Q. It is actually on an overall basis, is it not?

A. No, it is not.

1220 Q. It is overall for a particular product, for example, monochrome television?

A. Within this classification of television that we have here and radio; some of these costs were built up on a unit basis. Those which can be applied directly to the unit and those which cannot be applied directly to the unit are allocated to the unit on some equitable basis. An instance of this would be a space charge in which one cannot say that a certain square foot of space should be allocated to

a television set. These costs have to be allocated to units on some equitable basis.

Q. And I was coming to this question of space charge, which is one of the items. How do you allocate space charge, on a square foot basis, on the number of units, or how?

A. Space charge is included in our factory overhead accounts.

Q. So it is applied on a uniform basis to all products?

A. It is applied on two basis, one on a standard basis which has two elements and one is a percentage of
1221 the material content, and another factor is the content of labor within the set, and this allocation then goes to television or radio profit and loss on that basis. The balance which is overabsorbed or underabsorbed is spread to television and radio on the basis of the overhead allocated on the prior basis.

Q. So that there are several components in the question of space charge?

A. Yes.

Q. And some of them relate to the number of units or to the volume, one of the components?

A. Will you repeat that question, please?

Q. I say at least one of the components of space charge is related to the number of units or to the volume of the item, is that correct?

A. I don't understand what you mean by "one of the components of the space charge."

Q. You said the space charge was made up of several components, as I understood you to say.

A. Well, we have in our overhead accounts—we have depreciation, which is depreciation on not only space
1222 but on equipment and that is allocated with other overhead to products on the basis I have described.

Q. And one of those basis is on the term of the number of units, isn't it?

A. No, sir, it is on the basis of the material content and the labor content.

Q. Just those two items?

A. Within the units.

Q. Just those two items, material content and labor content?

A. Yes.

Q. Don't those vary with volume? In other words, if you build 10,000 receivers you have twice as much material and twice as much labor content as if you build 5,000, do you not?

A. Yes—well, that is true, but there is only so much to spread, and to the extent that you have more units and the same amount of overhead, it is spread thinner.

Q. Now, coming back again to the sheet which is marked Zenith Radio, Zenith sales unit in dollar sales, in which you show the unit prices for domestic sets, export in
1223 Canada, those are, again, averages of all types of television and radios, are they not?

A. That is true.

Q. Then if there was a difference in product mix in your sales, those figures would vary, would they not?

A. That is true.

1224 Q. Do you have any knowledge as to product mix as between urbans and rural areas of sales?

A. No, I don't.

Q. Now, let's come back again to the sheet Zenith Radio Corp., parent only, for 1962 finals. I call your attention under contribution to overhead, engineering direct and indirect. Now, the percentage I note is 1.67 for both television and radio. Does that mean that television and radio both have the same amount of engineering in them?

A. No, that means that we have allocated our engineering expense to radio and television on the same basis.

Q. And does that also apply to the item which is called "indirect administrative expense", which has the same percentages, 1.65?

A. That is true.

Q. And the same is true with respect to "legal expense", which in both instances is .43?

A. That is true.

Q. Well, then, doesn't that mean that actually those allocations are made on the basis of sales, of a dollar volume since it is exactly the same percentage in both col-
1225 umns?

A. For these accounts that you have mentioned we have found this the best way to distribute these expenses.

Q. Well, then, I would understand, according to your definition, that those should be considered variable expenses, if they are allocated on the basis of sales. I find over in the right-hand column that they are listed as fixed expenses. How do you account for that, the three items that I mentioned? Except for the last one, you have allocated only 25 percent to fixed and 75 percent to variable.

A. I don't think the way we have allocated these expenses has anything to do with whether they are fixed or variable.

Q. Well, I thought when you said, by your definition, that a variable cost is one that varied with sales and these costs, you say, are allocated on the basis of sales.

A. But that is two different things, Mr. Dodds.

Q. Will you explain? I don't quite follow that.

1226 A. We have a pool of engineering expenses which must be spread to products. Because they are spread on the basis of the sales dollar doesn't mean that they would

increase or decrease as sales dollars increased or decreased.

Q. If that is the case, why do you allocate them on the basis of dollars?

A. Because we have found this is the best way to make our allocation.

Q. But you still say that even though you allocate them on the basis of sales dollars, you say that it is still not a variable cost which varies with sales dollars?

A. That is true.

Q. Actually, Mr. Stevenson, aren't all of these figures on the basis of a standard percentage of the sales dollar?

A. Of which ones are you referring to, Mr. Dodds?

Q. Well, let's take the three that I was talking about, for example.

A. What was your question?

Q. Aren't they actually the standard percentage of sales dollars?

1227 A. No, they are not a standard percentage, they are a percentage that was developed after the sales dollar was determined and the total engineering expense was determined, a percentage was arrived at which to use to spread these expenses to product lines.

The Court: Before we get into some new documents, perhaps we ought to defer until tomorrow.

Mr. Dodds: Good.

The Court: Is it still your guess that perhaps you will finish tomorrow? The only reason I ask is that I indicated to some cases following you that maybe they could go ahead on Wednesday, but I can just as well tell them that they can't.

Mr. Dodds: Well, I would think, your Honor, that as far as I can estimate I should think we would be through by tomorrow noon, unless there is extended cross-examination.

The Court: Do you plan, at this time, any rebuttal, Mr. McConnell?

Mr. McConnell: Just one short witness is all.

1228 The Court: Maybe we could have our arguments in the afternoon and that would be the end of the case tomorrow.

Mr. Dodds: I think it would be safer, perhaps to count on Wednesday afternoon, your Honor.

The Court: Well, I mean, we can always tell them that it will be Wednesday, whether it is 10:00 o'clock or 2:00 o'clock, but it will probably be Wednesday.

(Whereupon, an adjournment was taken to 10:00 o'clock, a.m., of the following day, Tuesday, February 25, 1964.)

1229 * * (Caption—59-C-1847) * *

Before the Hon. Richard B. Austin,
Tuesday, February 25, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1230 The Clerk: Case on trial.

WILLIS STEVENSON, called as a witness by the Plaintiff and Counter-defendant for adverse examination, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Direct Examination by Mr. Dodds (Continued).

Q. Mr. Stevenson, would you refer to the sheet "Summary of Factory Overhead by Expenses for 1962."

A. Yes, I have it.

Q. The first item on that, "Hourly Supervision," you have indicated as "Fixed."

Now, is it your position that if the production of television sets for Canada were increased five-fold, there would be no increase in hourly supervision?

A. I think that is right, substantially correct, yes.

Q. You mean the same number of supervisory personnel could handle five times the production?

A. Well, we are—the factory overhead—the item that you are referring to, "Supervision Hourly," is the
1231 supervision for not only Canada but for domestic and export production as well. The Canadian portion of the—the amount of hourly supervision which would apply to the Canadian production is a small part of this amount.

Q. Well, Mr. Stevenson, my recollection was that you told the Court that you didn't know whether the Canadian sets came off the same production line as the United States sets or not. Isn't that true?

A. That is true.

Q. All right. So if you have a separate production line for the Canadian sets and increase that production five times, you will need no additional hourly supervision?

A. These would come off of the—if not the lines that are now used for Canadian production, they would come off of other lines in the plant.

Q. And would require no additional supervision?

A. I doubt it very much.

Q. You mean you could increase your production capacity five times, assuming now that you have sep-
1232 arate lines for Canadian sets, without increasing the hourly supervision? That is a fairly low level of supervision, is it not, hourly supervision?

A. The amount that we are talking about here?

Q. Well, I am talking about that hourly supervision are relatively junior personnel. The senior ones will be on a salary basis, would they not?

A. That is right.

Q. So is it your position that you could increase the capacity of a line by five times without increasing the junior supervisory personnel?

A. We are talking about here, I believe, a very small part of the total production which comes out of the plant.

The Court: You want the answer stricken as unresponsive?

Mr. Dodds: Yes, definitely.

The Court: The answer is stricken as unresponsive.

1233 Mr. Dodds: Read the question back, please.

The Court: Read the question, Mr. Reporter.

Try and give a responsive answer to the question that he is asking you.

(Question read.)

1234 By the Witness:

A. No, sir. That's wrong.

By Mr. Dodds:

Q. All right. Now, just as a basis for that, the first sheet—which is called sales and profits for 1962, and that's the year I'm talking about—I believe shows that Zenith claims a share of the Canadian market of 73,430 units, and actually sold 14,195. So there is approximately a five-to-one ratio; isn't that correct?

A. That's approximately right, on Canadian sets.

Q. Now, on this same sheet, let's take Item 2, Clerical Assembly, which you have assumed to be a fixed cost. And on this same assumption that these sets come off a separate production line, do you think you could increase the capacity of that line five times without adding any clerical help?

A. I think you have misread the title, Mr. Dodds. It is Clerical Hourly, not Clerical Assembly.

Q. Yes. That's what I understood.

1235 The Court: What's the difference between the two, or is there something else?

The Witness: Well, I had the impression he was referring to assembly labor. This is not—

By Mr. Dodds:

Q. No. This is clerical hourly. That is what I was referring to.

A. Yes, sir.

Q. My question was: On the assumption that these sets come off a separate production line, can you increase the capacity of that line five times without adding any hourly clerical help?

A. No, sir.

Q. Now, let's come down to the item which is entitled General Maintenance Labor. Now, I see that figure has been divided fifty-fifty between fixed and variable. Now, how did you arrive at that fifty-fifty split?

A. This was an educated opinion, sir.

Q. Was that your opinion?

A. It is the opinion of myself and our assistant controller and other people who are acquainted with the 1236 type of expense that goes into this—

Q. But did you make the decision of fifty-fifty, or who did make that decision?

A. I made that decision.

Q. And that was based on an estimate?

A. Yes.

Q. All right. Now, going back to the Item 3, which are Salaries, I believe that the detail—the fixed portion of those salaries, as I compute it, comes out at $3,604,708. Is that approximately right?

A. The fixed portion in 1962 is $3,375,249.

Q. That is Item 3. I'm talking about the sum of those three, the first three items.

A. That would be approximately correct, yes.

Q. Now, the detail of that is found over on, I guess it is, the second or third from the last sheets of the group that I have here under '62, where the detail of the third item is found; isn't that correct?

A. That's correct.

Q. So, now, let's consider some of these items. The first item on the third from the last sheet is produc-
1237 tion administration. Now, again, on the assumption that the Canadian sets come off a separate production line, could you increase the capacity of that line by five times without increasing the production administration?

A. Yes, sir, I believe so.

1238 Q. Well, how would you arrive at that decision? What does a production administrator do?

A. Production administration is the salaried people who have control over the production of the whole plant.

Q. Do you mean there is only man for the plant?

A. No. There are several men involved.

Q. And how many production lines would each man handle?

A. They don't handle production lines. They administrate all production lines.

Q. Well, but there is several in the plant, so each one must be responsible for a certain number of lines.

A. No, sir. That is not the way the responsibility is divided. The responsibility for all lines goes to this group of people.

Q. You mean it is a sort of a committee that decides how these production lines work?

A. I wouldn't term it a committee, no, sir. I would say that it is a group of men on a line basis who are
1239 organized on a line basis rather than a committee, who supervise the production lines of the whole plant.

Q. Well, you mean that there is no administrator that supervises the production of a single line that is responsible for the production of a single assembly line?

A. Yes. We were talking about those people before.

Q. You mean they are not included in this group?

A. Not in this group.

Q. All right. Then the third item on this same sheet, for test equipment, which I see you have spread fifty-fifty between fixed and variable—and I should like to ask what was the basis of that division?

A. This is an educated opinion, sir.

Q. It was your opinion?

A. Yes, sir.

Q. Yes. All right. I suppose the same thing applies down—these numbers in the first column, what do you call those—control numbers or job numbers?

1240 A. These are responsibility center numbers.

Q. Center numbers. All right. Center number 3170 was a fifty-fifty split. Was that again your decision?

A. Yes, sir.

Q. And based on an estimate?

A. Yes, sir.

Q. Then in number 3200, that is the plant number two administration. And that you included as a fixed cost. Now, does that include the same type of administration as plant number one?

A. Yes, it does.

Q. Well, now, which plant produces these sets which go to Canada?

A. No one plant produces all of the parts that go into a Canadian set.

Q. Now, we have down here number 3260, production control administration. What does that comprise?

A. Production control is a department that is organized to control material within the plant, and to see that the material gets to the line in proper time for use.

1241 Q. Well, now, is that what is sometimes called quality control, or is that something different than that?

A. Quality control is diffeernt, sir.

Q. Well, on this same assumption that these Canadian

sets come off a separate production line, is it your position that that could be increased five times without increasing the amount of production control administration?

A. Assuming they come off the same line, it is not true.

Q. I think you mean off of a separate line?

A. That's right. If they came off of a separate line, as you have assumed.

Q. Yes. Now, we have an item 3270 for contracts. Now, what does that item constitute?

A. 3270, contracts, is a department that is organized to handle government contracts.

1242 Q. It has nothing to do with the sales to distributors or dealers?

A. It has nothing to do with civilian production.

Q. I see. Well, I see now we come down to 3290, Quality Control. Now, what does that group do?

A. That group has the responsibility of spot-checking sets as they are produced in the plant, to determine the quality that is within the set.

Q. What would it do? Check every hundredth set, or every twentieth set, or every five hundredth set?

A. It is a variable amount, Mr. Dodds. I would say that the frequency is more often than one in a hundred. It is less than 90 out of a hundred.

Q. And, again, on the assumption that these Canadian sets come off a separate production line, if you increase the capacity five times, you would certainly have to increase the amount of the sampling, would you not?

A. That's possible, if they came off the same line.

1243 Yes, sir.

Q. You mean off a separate line.

A. Off a separate line.

Q. Now, turn to the next page. We have Item 3620, Requirement Controls. Now, what does that constitute?

A. Well, that is a department that is concerned with

determining the requirements of the lines at any particular time, and determining—or seeing that they are filled.

Q. And on the same assumption that these Canadian sets are produced on a line separate than the U. S., if you increased the capacity of that line five times, wouldn't that item increase?

A. That's true.

Q. So let's come to the next one—material control. What does that constitute?

A. Material control is a department organized to control the inventory of parts and components within the plant.

1244 Q. Well, now, again, assuming that these sets are separately produced on a line, wouldn't that cost increase if you increase the production five times?

A. Not necessarily, sir. When we are talking about additional quantities, we are not necessarily talking about additional items. We control our inventory by items rather than by specific quantities. If we are controlling 1,000 or 1,500 or 2,000 it doesn't make too much difference.

Q. Well, now, you are talking about quality control of received components, are you not?

A. We are talking about material control, I believe, sir.

Q. All right, but received materials?

A. Yes, sir.

Q. Now, isn't that, again, on a sampling process? Don't you check one in a hundred or one in a given number in either exactly or something approximating a regularity established?

A. Not in material control, sir.

Q. You do not?

A. No.

1245 Q. Now, the next item is 3640, which is Scheduling. Now, what does that group do?

A. Scheduling has the responsibility of, on a routine

basis, requesting materials from inventory to be moved to a particular spot in the plant for production.

Q. And, again, on the assumption that the Canadian sets come off of a separate line, isn't it going to involve more labor to keep this material moving if you have five times as much to move?

A. It may require some more, not five times, though.

Q. I notice that under Section 3900 we have another item of Quality Control; is that the same or different than the Quality Control Item 3450—not 3450, it is 3290.

A. I think that as you have gone down these sheets there have been many Quality Control accounts at different plants.

Q. So the same answer would apply with respect to Item 390 as would apply to Item 3290?

A. Yes, that is true.

1246 Q. And the next Item I find is 2110, Personnel, which is a pretty large item, because it was $280,000. Now, again, assuming that these Canadian sets are produced on a separate line, wouldn't there be more personnel involved in hiring, taking care of terminations and accessions for lines that had five times the amount of production?

A. I don't believe this would be a material factor, sir.

Q. There would be some variation. You couldn't expect the personnel people who handle the accessions and terminations for a line producing 14,000 sets to take care of personnel accessions and terminations producing 70,000 sets.

A. Well, that is right.

1247 Q. There is an item account, I believe it is 2200, Quality Assurance; what does that represent?

A. Quality Assurance is a department organized as a last step Quality Control department where finished sets

are taken from the production line or from finished goods and tested.

Q. And so the same comment you have given with respect to items 3900 and 3290 would also apply to that item, would they not?

A. No, sir, they would not.

Q. All right, would you explain that answer.

A. With respect to Quality Assurance, there is no specific number of sets or specific percentage of sets that are tested by this department. They select these sets at random within the plant and test them without regard to the volume of sets going through the plant.

Q. All right.

Now, let's come down to Item 3262, Inventory Control; what does that department do?

A. Inventory Control, this is a plant 2 item which 1248 would be similar to our material control plant 1.

Q. So the same comments that you gave with respect to material control would apply to inventory control?

A. Yes.

Q. Yes.

I think if I recall correctly, Mr. Stevenson, you testified that you prepared the top sheet which shows the lost sales and lost profits, is that correct?

A. Yes, sir.

Q. Then you made the decision as to which items were to be considered as fixed cost and which variable cost?

A. That is right.

Q. Now, I notice in here, if I read these correctly, that all depreciation was considered to be a fixed cost.

A. That is correct.

Q. Now, again assuming that these Canadian sets come off a line separate from the U. S., to call depreciation a fixed cost, that must mean that the facilities for producing

14,000 Canadian sets are adequate to produce 70,000
1249 Canadian sets, is that correct?

A. Under the assumption, yes.

Q. Well, then, that would involve an assumption that the capacity which you had for producing these Canadian sets was four or five times present production, would it not?

A. Will you read that question again, please?

The Court: Read the question, Mr. Comeau.

(Question read.)

By the Witness:

A. What would?

Mr. McConnell: I object to that question, four or five times the production of what?

The Court: I assume Canadian production.

Mr. Dodds: I was speaking of the Canadian—

Mr. McConnell: I would assume—

Mr. Dodds: I thought the assumption was that the Canadian sets were being produced on a separate production line, and, then, as I say, if you could increase five times as many sets without increasing facilities, that must mean your production facilities have an idle capacity; in other words, they were capable of producing about five
1250 times their present production, would it not?

The Witness: That is true.

By Mr. Dodds:

Q. Now, on the sheet near the back entitled "Summary of Factory Overhead Expenses for the year 1962," would you turn to that?

A. Yes, I have it.

Q. Now, let's consider Account No. 371, Depreciation. What is included in this Depreciation factor; facilities, buildings, equipment, and so forth?

A. That is right, sir.

Q. All buildings and all facilities?

A. I believe that is right, sir, all buildings and all facilities, all depreciable facilities.

Q. Now, how is this annual depreciation charge allocated among various products produced, such as monochrome TV, color TV, radios, hearing aids, how is it allocated?

A. It is allocated, as I explained yesterday, Mr. Dodds, through our method of allocating factory overhead to products on a combination of bases: The first is a percentage of the material content of the set; a second base
1251 is percentage of the labor content of the set, and for any over or under absorbed burden the balance is allocated on the basis of the total of the prior two.

Q. So, then, there are three components, first, on the basis of material content. Now, again—well, on any assumption, whether separate or the same lines, the material content of 70,000 sets is going to be five times the material content of 14,000 sets, isn't it?

A. That is right.

Q. And the labor content will be roughly in that same ratio, will it not?

A. That is right.

Q. And the third factor that I think you said was the dollar sales, yesterday, the under or over absorption.

A. No, I said the combination of the two that you have just named.

Q. I see.

A. The total of the two.

Q. All right. So that all three of these factors, then, vary with quantity; so how can you say that is a fixed charge?

A. I say it is a fixed charge because the depreciation amount would not increase or decrease with the
1252 increase or decrease in the production.

1253 Q. Well, the factors that you have—for example, the overage and underage must, must it not, because if you apply a standard depreciation charge to the various items allocated, as you have suggested, and then there isn't enough, then you go back and add some more on, so the volume does change, doesn't it?

A. To the—let me go back a little bit, sir, if I may; with additional production the depreciation amount included in factory overhead would not increase, therefore, with an increase in production and an increased dollar material content or labor content in Canadian sets would bear a smaller percentage of the total factory overhead.

Q. But there would be some variation in quantity, would there not?

A. No, I don't believe so.

Q. You mean to say, Mr. Stevenson, that if you have a plant that is producing, for the sake of argument, a hundred thousand television sets; and you had a plant that is producing ten thousand radio sets with, maybe, a price ratio of ten to one, that you would allocate the same 1254 amount of depreciation to both those plants?

A. No, sir, I didn't say that.

Q. Well, I didn't think you did, but it seems to me that that is the sense of your testimony, that it is independent of the volume of production.

Mr. McConnell: Is that a question?

Because if it is, I am going to object to it.

The Court: I don't think it is a question.

By Mr. Dodds:

Q. I will ask if that statement is correct, Mr. Stevenson?

A. May I have that question again, please?

The Court: Read it, Mr. Comeau.

(The question was read.)

By Mr. Dodds:

Q. And then I asked you if that statement is correct.

A. The amount of depreciation allocated to an increased volume of production would be the same amount as would be allocated under a smaller volume of production.

Q. I don't think that quite answers the qeustion,
1255 Mr. Stevenson. I said under the assumption that I had made, is my statement correct?

Mr. Dodds: Maybe you had better read back the statement again.

Mr. McConnell: I would suggest that you would save a little time if you would give a new question.

The Court: I suggest that you ask a new question that is less involved. Ask a question that definitely has a question mark on the end.

Mr. Dodds: Yes, Judge.

The Court: All right.

By Mr. Dodds:

Q. I believe in the preceding question and answer I posed the question that if you assume one plant producing a hundred thousand television sets at an average price of $100 and another plant producing ten thousand radios at a price of $10, would you allocate the same amount of depreciation to those two plants, and I think your answer was no. Then the next question is, since that is not true, then, is not in fact a depreciation dependent at least in
1256 part upon the dollar volume of sales produced by a given operation?

A. Not the dollar volume of the operation, Mr. Dodds, it is dependent upon the material content of the sets sold and the labor content of the sets sold.

1257 The Court: Wouldn't the dollar volume have some relationship—

The Witness: There is some relationship there, sir.

The Court: I would think there would be quite a relationship.

Mr. Dodds: I think the witness previously answered that specific question, that when we went back to Material Controls and Labor Content that that did vary with volume.

By Mr. Dodds:

Q. Now, still on the same sheet, Mr. Stevenson, Item 372, Property Taxes, what taxes are included in that item?

A. I am not sure of the exact—

Q. Do you know whether they include personal property taxes?

A. I assume they do, but I am not sure.

Q. And Cook County has substantial personal property taxes, does it not?

A. That is your statement.

Q. And those would vary with the amount of inventory, would they not?

A. I assume they would.

1258 Mr. McConnell: If he knows. If he is an authority on tax law. I don't know whether he is or not.

Mr. Dodds: If he doesn't know, all he has to do is say so.

By the Witness:

A. I said that I assume they would. I don't know.

By Mr. Dodds:

Q. All right. Now, on that assumption, if you increased the volume of production of a line producing sets for Canada by five times, wouldn't you expect there would be a substantially larger inventory?

A. There would be some larger inventory, yes, sir.

Q. All right. Now, let's look at the item next, 373, Insurance; do you know what types of insurance are included in that account number?

A. Not the specific names of the insurance.

Q. Do you know whether it includes insurance on inventory?

A. I assume it does.

Q. All right.

1259 Now, let's look at the next item, 375, Utilities; I assume that is primarily electrical power, is it not?

A. Yes, I assume it is heat, light and power.

Q. So, again, on this assumption of a separate line for producing Canadian sets, if you had a line that produced five times as many sets, wouldn't it take an additional amount of power?

A. There would be some increase, yes, sir.

Q. Now, let's look at Item—back up, 368, the Annual Inventory; what does that represent?

A. This is the cost at the year end of taking a physical inventory.

Q. And, again, assuming that you have a separate production line for these Canadian sets, if you increase the volume five times, I think you have already indicated that there would be an increase in the inventory? Wouldn't there be an increase in the cost of this item?

A. Very little, sir.

Q. Pardon?

A. Very little.

Q. Well, there would be some. You mean, it

1260 wouldn't cost any more to take an inventory to produce 70,000 sets than to take an inventory of the material and components to produce 14,000 sets?

A. Very little difference, sir.

Q. Now, Item 901 is Space. How is that allocated to th different production items?

A. On the same basis as all of these other overhead accounts, which I explained before.

Q. My recollection is that your answers to my ques-

tions indicated that all of these overhead accounts are not based on the same formula, some on one and some on another.

A. The allocation to product lines, I believe is what you are referring to, is it not, to black and white television and to radio?

Q. Yes.

A. All of these overhead accounts are allocated as a total to product lines on the basis that I have described, which is a percentage of material content and a percentage of labor content, and the over or under absorbed burden on the total of those two.

1261 By Mr. Dodds:

Q. Now, let's look at Account 904, Data Processing. I notice there you have split fifty-fifty between fixed and variable. And I ssume that the basis for that split is the same as you previously testified as to other splits in certain of the other overhead items.

A. That's right.

Q. Now, let's turn back to the sheet entitled Zenith Radio Corp., Parent Only, 1962 Final, and account number—this doesn't have an account number. The account under Contribution to Overhead, Overhead, indirect administrative, what does that—what specific items of expense or cost are included in that item?

A. These costs include the top management group, the controller's group, the financial division, and I believe that is just about all—or credit department, as well.

Q. And Item 2, Sales Expense, to which you have distributed 25 per cent fixed, and 75 per cent variable, what does that item include?

A. This sales expense relates to Canada only on the books of the parent company. It relates to the parent

1262 company top management of the sales organization in Canada.

Q. In Canada.

A. Yes.

Q. Now, if this sales organization in Canada was charged with selling 70,000 sets per year instead of 14,000 sets, that would involve quite a number of additional contacts with dealers and distributors, would it not?

A. These contacts—I don't think it would involve substantially more than they are already making.

Q. You mean the sales force that you have in Canada could sell five times as many sets without any additional cost?

A. I'm sorry, sir. I believe I explained that this is the administration of that sales force, and not the sales force itself.

Q. All right. Now, I think that you testified that you had eliminated such cost items as one profit-sharing requirement provision.

A. Retirement.

Q. I am sorry, retirement provision. I misread.

1263 A. Yes.

Q. Now, these figures which you have offered purport to show that if you had this additional sales, you would have very materially increased profits in Canada. Wouldn't this item increase proportionately?

A. This item would have to be paid out of any profits that were attained.

Q. I don't believe I understood that.

A. This provision would be made from any additional profits that were made in Canada.

Q. So that the item would increase roughly proportionately with profits, would it not?

A. For the purpose of this computation, it would come from the lost profits which I have summarized on the schedule.

Q. Well, then, wouldn't it be a variable cost?

A. It would be variable, sir—

Q. That's the answer. If you want qualifications, suppose you let your counsel bring them out?

A. All right.

Mr. McConnell: Retirement fund?

Mr. Dodds: Profit-sharing retirement provision 1264 was the language Mr. Stevenson used at Page 85 of the record.

By Mr. Dodds:

Q. Now, in computing the lost sales and profits in England, have you generally followed the same formula that we have gone through in some detail for Canada?

A. Yes, sir.

Q. Now, there has been testimony previously that the British sets have to be somewhat different because of, among other things, the different standards in England. Wouldn't that involve—don't you think it is appropriate to eliminate engineering with respect to British sets?

A. I think it would be, sir.

1265 Q. You mean you can make all of these changes to these sets—I think it has been testified to, for example, that Great Britain uses positive modulation versus negative modulation; they use a scanning frequency of 405 lines instead of 525 lines; they use an amplitude modulation for sound instead of a frequency modulation for sound. Those changes could all be done wthout any engineering?

Mr. McConnell: Wait a minute. If you are going to summarize the testimony, it was also testified by Mr. Kaplan that all the changes that were necessary to be made, the distributor could make in a back room with a screwdriver.

The Court: There is evidence that some distributor was able to take a monkey wrench and a screwdriver and—

Mr. Dodds: Mr. Kaplan also testified that that was on a single job basis, one by one, not on a production basis.

The Court: I understand. The objection is overruled, because we are now talking about making the changes
1266 at the factory, on the production line.

Mr. Dodds: Right.

By Mr. Dodds:

Q. Would you answer the question?

A. May I answer it this way, sir: That these things are explored—the engineering requirements to change a domestic set to a British set are explored normally in our engineering department. And the answers to this problem, the engineering answer to this problem are available and have been available in the past.

Q. Now, Mr. Stevenson, according to figures you show here, Zenith Radio Corporation sold in Great Britain in four years 65 sets. Now, what is your basis for determining there wouldn't be any engineering to put those sets on a production basis?

Mr. McConnell: He just answered that question.

Mr. Dodds: No, he didn't.

The Court: If he thinks so, he can so state.

By the Witness:

A. I believe I answered the question before. May
1267 I repeat it this way. That over a period of years, we have maintained contact with what the requirements of the British sets are, and our engineering department has investigated the changes required, and these answers are available, so that there would be no engineering, additional engineering required to make a U. K. set.

By Mr. Dodds:

Q. Did you make a personal investigation of anybody in your engineering department that no engineering would be required to put into production a television receiver meeting the British standards?

A. No, I did not personally do this.

Q. Now, the same formula you used for Canada and Great Britain, you also supplied in computing the asserted lost profits in Australia; is that correct?

A. Yes, sir.

Q. And did you make any check with your engineering department to determine whether there was any difference in the sets which would have to be sold in Australia which would require any engineering expense in order to
1268 put such sets into production?

A. I did not personally do that; no sir.

Mr. Dodds: And I think—what is rather obvious—that all of the items about which I have been quizzing Mr. Stevenson are items which in the sheets are indicated as fixed charges; therefore, they have been deducted in manufacturing costs in attempting to build up an actual profit of between four and a fraction and ten per cent up to around 20 per cent.

That's all the questions. Thank you.

The Court: Next, Mr. McConnell.

Mr. McConnell: I don't know about that last statement —what that was, whether it was an argument or evidence.

The Court: That's all of the questioning, a rather flowery closing of the examination.

Cross-Examination by Mr. McConnell.

Q. When you were taking over the computation with reference to Canada, you were taking over the computation of hourly supervisors which you have, as I under-
1269 stand it, in your schedule tabulated as a fixed charge.

A. Yes, sir.

Q. Now, Mr. Dodds has been talking about the production of 75,000 sets as compared with 14,000 sets actually produced. Can you tell us of your own knowledge whether or not Zenith has the capacity, without adding any other

capacity out there, to produce 75,000 sets a year in addition—

A. It is my opinion they do, yes, sir.

1270 Q. Now, you have shown that as a fixed charge. Will you tell the Court why you have shown it as a fixed charge?

A. Yes, sir. The hourly supervision which we were talking about is the hourly supervision not only relating to the Canadian sets but to all sets produced. And I think as our schedule summarized here, in the case of television we are talking of over a million television sets each year rather than 14,000 as a base. And in the case of radio, it is an equal or larger number of radios.

This hourly supervision relates to the hourly supervision required for total factory production, and not just Canadian production.

Q. Using the computation that you have been using, your unit cost goes down, doesn't it, rather than increases with the additional production?

A. Yes, sir. With respect to the fixed items, the unit costs would go down. With respect to the variable items, the unit costs would remain the same.

1271 Q. Now, if you hadn't used a fixed cost, just used the costs as tabulated on present production, you would have a higher figure, would you not, for costs than you do now in your tabulation?

A. Yes, sir.

Q. And that's true of item two, is it—clerical help?

A. Clerical help is of the same nature; yes, sir.

Q. And is that also true of the salaries which you total up here at about $3,375,000?

A. In my opinion, it is; yes, sir.

Q. As you increase your production, the cost per unit goes down?

A. Yes, sir.

Q. And that's what you mean by a fixed cost, isn't it?

A. That's right.

Q. That's the way you define it in your direct?

A. Yes, sir.

Q. Now, throughout all of these questions, there
1272 has been the assumption that the Canadian sets are produced on one assembly line. Do you know whether or not that is a valid assumption, the way the plant is operated?

A. I would say it is not a valid assumption as we normally operate. As I testified yesterday, I do not know that they are made on one line or several lines or mixed lines. But as Zenith operates, it would be normal to make Canadian sets not only on one line, but on any line that is available.

Q. Well, do you know whether or not components that go into radios and television sets that you sell are made on separate lines or all made together on the regular lines in the factory?

A. With respect to those that we manufacture ourselves, the large majority of components that go into a Canadian set or a U. S. set are made on the same line. There is no difference between these components, and they are used indiscriminately on either Canadian or U. S. sets.

Q. Now, you were asked about this profit sharing retirement fund. Let me ask you, isn't that a sharing of profit shown on your books?

1273 A. Yes, sir, it is. The provision is made from profits actually realized during the year.

Q. Now, in the event that you did sell 75,000 sets as compared with the 14,000 sets actually sold, is there any adjustment made in your computation for that additional sharing of profit?

A. Yes, there is a provision made. The provision is

that this expense has not been included as variable expenses because the profit to the extent that any additional profit is earned—a portion of that profit would have to be set aside. In this computation, I have come to a lost profit situation before having set aside any additional profit sharing contribution that would have to be made from those profits.

Q. What I'm getting at, that's not a cost item. That is a method of sharing the profits actually made; isn't that true?

A. Yes, sir.

Q. Just like dividends would be a method of sharing?

1274 A. Yes, sir.

Q. Now, this method allocating items between fixed and variable costs, is that a method that is set up and used in the ordinary course of business out at Zenith?

A. No, sir, it is not.

1275 Q. And who did you consult with in making that division?

A. I consulted with individuals in the financial division who have day to day contact with accounting for costs, to determine the nature of the expense accounts, the type of expenses that went into them, and from that information estimated the percentage of those expenses which would remain constant and those that would vary with additional volume.

Q. Well, is this estimate made in accord with your experience with the accountants at Zenith and in accord with sound accounting practice?

A. Yes, sir, it is.

Mr. McConnell: I have nothing further.

Redirect Examination by Mr. Dodds.

Q. Mr. Stevenson, in response to Mr. McConnell's question, you indicated that Zenith had the capacity to produce, say, an extra 55,000 sets, television sets, using round numbers, with its present facilities, without any increase in production facilities.

1276 That answer was based, was it not, on the assumption that those sets would be made on the same production lines as the U. S. receivers?

A. Yes. It is based on the assumption that where additional capacity would be required, that additional volume would be spread among the production lines available, whether they are Canadian or U. S.

Q. What percentage of the components in a Zenith television set are made by Zenith itself, in terms of dollars?

A. I have no answer to that. I don't know the answer.

Q. You don't have any idea?

A. No, sir.

Q. Well, do you have an idea of the magnitude? Is it 25%?

Mr. McConnell: I object to him guessing about it. If you want that, I can get that information for you from accurate sources.

Mr. Dodds: I just want to know whether this witness knows. He prepared the figures.

Mr. McConnell: He says he doesn't know.

1277 The Court: He can answer more definitely if he can. If he can't, he doesn't have to.

By the Witness:

A. I would say it is in the nature of 25%.

By Mr. Dodds:

Q. These profit figures which you developed in the materials, they are computed on the basis of total costs, not unit costs; isn't that correct?

A. They are based partly on unit costs and partly as allocation of general expenses to the products.

Q. And those are total costs rather than unit costs?

A. I would like to have your definition of total costs, sir.

Q. Well, all right. Let's look back at the sheet, Zenith Radio Corp., parent only, 1962 finals. Those figures, the headings Black and White—I assume that's television—and Radio, that is in terms of total dollars, not dollars per unit; isn't that correct?

A. That's right, sir.

Q. And it was on the basis of these figures of this sheet that you computed the percentages which you
1278 attributed to be fixed percentages and, therefore, deducted from the cost of additional production for Canada; isn't that corrct?

A. That's true.

Q. Now, this profit sharing provision, I think you have indicated that as the profits go up the amount into that fund goes up. So that represents—that increase in the amount that goes into this fund—dollars that Zenith doesn't get. It may be a loss to Zenith employees, but it is not a loss to Zenith Radio Corporation; isn't that correct?

Mr. McConnell: That question is perfectly unintelligible to me.

The Court: I don't understand what that means. If I was going to ask it, I would ask it the other way.

Mr. Dodds: All right.

By Mr. Dodds:

Q. Let's just take some numbers. Sometimes it is helpful to take numbers.

Assume that the operations in respect to Canada
1279 increased from $100,000 to $200,000 before considering this profit sharing fund.

A. Yes, sir.

Q. Now, if you did that, the amount that would go into that fund would be doubled too, wouldn't it?

A. Yes, sir.

Q. And that doubled amount would represent dollars which Zenith Radio Corporation didn't get, wouldn't it?

A. That's right.

Q. So in the sense of your talking about the net results in profit of Zenith Radio Corporation, it would represent a decrease in profits; isn't that correct—the final net result of the dollars which Zenith Radio Corporation could put in its pockets?

A. That's right, sir.

1280 The Court: That's just the opposite of the way you asked the question.

Mr. Dodds: I believe I misstated myself. I thank you.

The Court: That's just the opposite.

Mr. Dodds: I think that is all the questions. Thank you.

Mr. McConnell: I just have a couple of questions.

Recross Examination by Mr. McConnell.

Q. This profit that we have been talking about, and the retirement fund, you have to get profit before you have anything to share; isn't that right?

A. Yes, sir. And I would like to explain this a little further, to the extent—

Q. You go right ahead and explain it.

A. (Continuing.) —to the extent that there would be profits coming from this additional business, or from the result of a lawsuit, or from many other reasons, that this money also would be shared with employees. So that

1281 it is not right to provide for this profit-sharing twice, first before—first to obtain a lost profit on these sales, and second on any moneys received as a result of the payment of this.

Q. That would just be chasing yourself around in a circle, wouldn't it?

A. Yes, sir.

Mr. McConnell: That's all I have.

The Court: Did any of the employees get part of this ten million dollars after what was left when the lawyers got through with it?

The Witness: I believe so, sir.

The Court: All right.

Mr. Dodds: Just one final question.

Mr. McConnell: I think the lawyers are employees, too.

Further Redirect Examination by Mr. Dodds.

Q. On this same profit-sharing provision, what you say may be true—that the provision for profit-sharing may not be included as a cost in determining what the profit on which this provision is based but, still, before the 1282 dollars that Zenith Radio puts in its pockets, that amount that goes into that fund is deducted from the final profit computed without including that factor; isn't that correct?

A. I would like to have that question read, please.

(Question read.)

The Court: Can you answer that?

The Witness: No, sir. I don't understand that question.

The Court: I was going to listen with great interest if you could.

By Mr. Dodds:

Q. I will try again. I think I agreed that this provision for the retirement fund may not be included as a cost item in computing profit. I think that's what you testified, isn't it?

A. Yes.

Q. I agree with that.

Mr. McConnell: Well, you agree with it now after you heard his answer.

Mr. Dodds: I agreed right along. I always agreed, Mr. McConnell.

By Mr. Dodds:

Q. What I say is, therefore, excluding that factor,
1283 and computing your profit, after you have computed the profit, at that time you have to deduct the amount that goes into this fund before you determine how many dollars Zenith puts in its pocket; isn't that true?

A. That's right.

Q. So that in the final analysis as to the dollars that Zenith earns as a profit and keeps, that is a factor; isn't that correct?

A. That's right.

Mr. Dodds: That's all.

Further Recross Examination by Mr. McConnell.

Q. Well, Mr. Stevenson, your schedules are designed to compute the profits lost, by virtue of what's happened up in Canada, what your lost profits are up in Canada; isn't that true?

A. Yes, sir.

Q. You are not concerned with who gets the profits.

A. That's right.

Mr. McConnell: That's all.

Mr. Dodds: I think maybe this can go on per-
1284 manently.

The Court: I feel like I'm at Wimbledon.

Further Redirect Examination by Mr. Dodds.

Q. You mean you are not concerned with how many final dollars Zenith Radio Corporation can retain? Isn't that what you are finally interested in?

A. We have to be concerned with two things, sir. If we had made these additional profits in these years, part of it would have gone to the profit-sharing fund, and part of it would have gone into Zenith's pocket. To the extent that there is any recovery of these lost profits, part of that money would go into the profit-sharing fund and part of it into Zenith's pockets.

A. Yes, sir.

Q. And they are not parties to this litigation, I think.

Mr. Dodds: That's all.

1285 The Court: You are excused, then, Mr. Witness.

(Witness excused.)

The Court: We will take our morning recess.

(A short recess was taken, after which the following further proceedings were had herein:)

1286 Mr. McConnell: If the Court please, we have had a long cross-examination and there was some direct on these two exhibits, Defendant's Exhibits 218 and 220. I offer them in evidence at this time, even though I am out of order.

The Court: Any objection?

Mr. Dodds: No objection.

The Court: They may be received.

(The said documents, so offered and received in evidence, were marked DEFENDANT AND COUNTER-PLAINTIFF'S EXHIBITS 218 and 220.)

Mr. Dodds: I will call as the next witness for the plaintiff Mr. Hartley.

MYRON R. HARTLEY, called as a witness on behalf of the Plaintiff and Counter-defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Hartley, would you state for the record your full name and residence.

A. Myron R. Hartley, Mt. Prospect, Illinois.

1287 Q. Would you state briefly your education and professional experience?

A. I received an A.B. degree from De Pauw University, Green Castle, Indiana, and an M.B.A. degree from the University of Chicago. I worked five years for the public accounting firm of Peat, Marwick, Mitchell & Co.,—

Q. Could you speak up just a little bit?

A. Three years for Arthur Anderson & Co., and since 1955 I have either been an individual practitioner or a partner in the firm of Smith and Harder.

Q. And what is your present professional connection?

A. I am a partner in the firm of Smith and Harder.

Q. Have you examined these group of papers which I show you comprising Defendant's Exhibits 218 and 220?

A. Yes, sir.

Q. I show you a sheet of paper and ask you if you can identify what that sheet is.

A. Yes, sir, this is a summary by years, 1960, 1961, 1962 and 1963, of the operating profit percentages 1288 shown in those work papers you just showed me.

Q. Does this sheet represent any computations or a transcription of figures, related figures, into one table?

A. It is a summary of the figures in there. It involves no computations.

Mr. Dodds: I should like to offer in evidence as Plaintiff's Exhibit 63 the sheet identified by the witness.

The Court: It may be received.

(The said document, so offered and received in evidence, was marked as PLAINTIFF AND COUNTER-DEFENDANT'S EXHIBIT 63.)

By Mr. Dodds:

Q. Mr. Hartley, did you make an investigation from published records of the financial returns of the Zenith Radio Corporation from 1958 to date?

A. Yes, sir.

Q. And did you determine in that investigation the net profit before taxes as a percentage of sales for that period?

1289 A. Yes, sir.

Q. And what did you find from that?

A. Well, we found that in 1958 the income before Federal income taxes represented 13.2 per cent of sales.

Q. And—

A. 19—do you want me to continue?

Q. For the succeeding years.

A. For 1959, the same percentage was 13.6 per cent; for 1960, it was 12.8 per cent; for 1961 it was 13.9 per cent; for 1962 it was 13.1 per cent.

Q. And did you check to see over that period what was the range of the total sales of Zenith Radio Corporation?

A. Yes, sir. I recall in 1958—I am not sure of these figures.

Q. Well, you are sure of the round figures?

A. I think it was 195 million dollars in sales in 1958.

Q. In 1962, do you recall what that was?

A. Three hundred and twenty-four, I think, 324 million.

Mr. Dodds: That is all.

1290 Mr. McConnell: No cross.

(Witness excused.)

The Court: Has this got a number, by the way, this exhibit?

Mr. Dodds: 63, your Honor, PL-63.

Your Honor, I am again in a somewhat embarrassing position. You will recall that counsel for the defendant called me as a witness and Mr. Diggins, with the approval of Court, deferred cross-examination until he could call me, and said that it would be all in one story. I should like to know whether or not my assuming the witness stand in this capacity should disqualify me from further participation in the case.

The Court: You did it in the patent case. I don't know why there would be any difference—

Mr. McConnell: There is no such contention here that he is disqualified.

The Court: All right. You may take the stand, Mr. Dodds.

1291 LAURENCE B. DODDS, called as a witness on behalf of the Plaintiff and counter-defendant, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Diggins.

Q. Mr. Dodds, I don't know whether it is clear on the record, what is your occupation?

A. I am a practicing lawyer.

Q. And what is your relationship to the Hazeltine companies?

A. I am on a retainer as a consultant and I am a vice president of the parent corporation without any official assignments.

Q. And what proportion of your time do you spend on Hazeltine affairs?

A. Between 30 per cent and 40 per cent.

Q. Do you represent any other clients?

A. Yes, I do.

Q. And when you say 30 to 40 per cent, you are speaking of your working time?

A. I am speaking of working time, yes.

The Court: You are speaking of your time as a practicing lawyer.

1292 The Witness: Yes, your Honor.

The Court: All right.

By Mr. Diggins:

Q. Wasn't there a period of time when you were responsible for the licensing activities of Hazeltine?

A. There was one period of time when I was largely responsible for the licensing of the plaintiff in this company under the domestic patents and there was another period of time when I was largely responsible for the licensing in the foreign patents owned by the parent Hazeltine Corporation.

Q. Well, will you specify what those periods of time were, please?

A. Insofar as the domestic situation, there was a gradual transition period commencing about 1946, but I believe that I had substantially complete responsibility commencing about 1948 until 1960, when I gave up all of my administrative responsibilities with any of the Hazeltine companies.

As to foreign licensing, during the early part of the period I just mentioned, foreign licensing was handled

1293 almost entirely by Mr. Binns. Shortly before this retirement in the early—

The Court: Would you give us years rather than "the early time and the later time"?

By the Witness:

A. Roughly, from 1946 up until a period in the early fifties, where there was a transitional period, no sharp cutoff, shortly before Mr. Binns' retirement I gradually

assumed more of the responsibilities for the foreign licensing, and I would say that I assumed them completely upon his retirement, which was about the middle fifties, until 1960, when I gave up my responsibilities with the Hazeltine companies.

By Mr. Diggins:

Q. So that there was about a five or six-year period, from '55 to '60, where you were responsible for licensing in both companies?

A. That is correct.

Q. Both United States and foreign?

A. That is right.

1294 Q. Now, just so that we will understand each other, throughout this examination, except where it becomes important, in referring to Hazeltine we understand that it includes the Hazeltine companies generally.

A. That is correct. There is a stipulation on the record that solely for the purposes of this action the plaintiff Hazeltine Research and the parent Hazeltine Corporation can be considered as a single entity.

Q. Now, Mr. Dodds, to your knowledge, has the Hazeltine Company ever refused to grant a license under a single patent for radio and television—radio or television?

A. From my experience, both personal and direct, and from familiarity with the records, I am confident that it never has.

Q. Anyone requesting a license under a single patent or any combination could obtain it?

A. I would have to qualify my answer to that because of the fact that up until, I think it was about 1958, no manufacturer of radio or television receivers ever made such a request, so it never was refused. Since that period

1295 there have been numerous negotiations for the granting of licenses under individual patents to manufac-

turers in the radio and television field, and as was testified in the earlier stages of this proceeding by Mr. Thomas, a group, I believe, of some seven, eight or nine companies do operate under a license of the single patent involved in this case.

Q. Now, there was some talk, I believe, yesterday, about a fifty, eighty, one hundred per cent royalty on three patents; will you explain the royalty formula on those individual patents for monochrome television?

A. Well, I think maybe it would help if we give the start: Up until about the first of 1958 Hazeltine owned a number of patents, some of which—one of which, at least, had been held by the Court of Appeals of this Circuit to broadly cover television receivers on the market, and there did not seem any occasion and there had been no requests for a license from the individual patents. With the expiration of that patent Hazeltine owned no patent
1296 which had to be used. Any patent which it had could be designed around. Whether a company wanted to license under a particular patent was either a question of engineering design preference or economics.

It seemed to me that under those circumstances that we should take the initiative and offer the licensees the opportunity of taking licenses under individual patents rather than the group of patents if they so elected.

We arrived at the formula of fifty per cent, eighty per cent, one hundred per cent of a rate for the group license on the basis, at that time, that there were only three or four Hazeltine patents in the monochrome television field of rather general application, and I had found, from my own investigation, that seldom did any television receiver use more than three of those patents at a time; therefore, it seemed to me that three patents represented substantially the total maximum worth of the group of patents in respect to monochrome television.

1297 The fifty, eighty, one hundred per cent formula was based on the provision that there are certain administrative costs that occur whether a licensee takes a license under one patent, two patents, or three patents. It is sort of like the same question of the incremental sales in Canada that we have been talking so much about. The increased number of licenses under an increased number of patents, I say, reduces the unit costs of administration per patent. The formula was discussed with outside counsel both in New York and in Chicago and it was considered to be an equitable formula and it was adopted and voluntarily offered to the licensees, some of whom accepted it and some of whom elected to continue under a license under the group of patents.

1298 Q. Now, speaking of 50, 80 and 100 per cent, that is 50, 80 and 100 per cent of what?

A. Fifty, eighty and a hundred per cent of the percentage royalty applicable to monochrome television receivers, which at the time was .95 per cent, that is slightly less than one per cent of the manufacturer's selling price, and with respect to monochrome there was a lump sum alternative payment of $50,000 per year, and the 50 per cent, 80 per cent, 100 per cent also applied to the lump sum payment; so that a license under a single patent had an annual lump sum payment of $25,000, under two patents $40,000, under three or more $50,000.

The Court: And is that 50, 80 and 100 per cent of this package 918?

The Witness: That is spelled out with respect to monochrome in the Form 918 license. It is the 50 per cent, 80 per cent and 100 per cent of the .95 per cent.

The Court: I understand, but it is 50, 80 and 100 per cent of the package deal represented by 918.

The Witness: That is correct, yes.

1299 The Court: All right, that is the question.

By Mr. Diggins:

Q. Mr. Dodds, you mentioned the fact a moment ago that there were three patents, or four, that were rather generally used; could you identify those?

A. I am not sure I can now because that was some years ago. I can identify some of them, not by numbers. One of the four was the patent in suit. Another patent was Patent 2,416,424, Wilson, on a ringing circuit for a horizontal oscillator, and that patent, some time after this formula was adopted, was in litigation with the Philco Company who found a reference which we thought was sufficiently close that we considered the patent non-enforceable.

The third patent involved a grounded grid amplifier circuit used in the tuner of the television receiver.

I don't recall the fourth.

Q. Well, now, Mr. Dodds, outside of those three or four patents there has been a lot of conversation here
1300 about this vast web of patents that you hold; has anyone, in considering monochrome, for the moment, anyone asked, apart from those who asked for the whole group, has anyone asked for individual licenses under those other patents, outside of those four.

A. No.

Q. Have you ever threatened or sued anyone under any of those patents other than the four?

A. No.

1301 The Court: That includes radio patents?

The Witness: I am speaking now of recent years, yes, your Honor. I think I mentioned earlier that since 1955 Hazeltine has collected no royalties on radio patents. And I can supplement, has made no threats of infringement or brought any suits in respect to radio patents.

The Court: In Canada or the United States.

The Witness: In Canada or the United States—maybe

I should qualify that: So far as I know about Canada, I personally have not—

The Court: I mean, to the best of your knowledge, no one has done it in regard to your patents.

The Witness: To the best of my knowledge, that is so. I am sure in the United States. I believe that is true in Canada.

By Mr. Diggins:

Q. In other words, as far as their economic impact, those patents didn't exist.

Mr. McConnell: I object to that as calling for a
1302 conclusion of the witness.

The Court: Yes, the objection is sustained to the form of the question.

By Mr. Diggins:

Q. Mr. Dodds, I show you a copy of Exhibit DX-7, a copy of a letter signed "Larry" to Mr. Jack Binns and dated August 8, 1951, and call your attention to the second paragraph on Page 2. Would you read that paragraph into the record?

A. I think it has been read into the record before, but I will read it again.

Q. I think it has, too, but I—

A. Redfield—this related to a conversation between myself and Mr. Redfield of Abco Manufacturing Company, and the paragraph in question reads:

> "Redfield urged that they be permitted to take a 'sample' of our license for a shorter period than five years to try it out and see if they like it. I said that the answer to that was absolutely no. Redfield then asked that we make a proposal to them based only on the patents on which we had warned them of infringe-
> 1303 ment, the royalties to be based on the use of these patents. I said that I would do so but that the rates

of royalty for such a license would probably be such as to exceed the $50,000 on their volume of business and that the license would necessarily contain some provision to insure against litigation as to the use of the licensed patents. I also said that we disliked that sort of arrangement as being one in which the licensee might be licensed at any given time under one group of patents while we would find it necessary to sue them on other patents and that such litigation would seriously impair the usefulness of the license. As the discussion progressed this suggestion pretty well dropped out of the picture."

Q. Now, Mr. Dodds, what happened after that letter? What were the subsequent events in connection with the ABCO situation?

A. Well, the negotiations of which in part are related in this letter collapsed. A suit was brought against
1304 ABCO in this court on a patent which has since expired. That patent was held valid and infringed by this Court and affirmed and held valid and infringed by the Court of Appeals of this Circuit. In that case Mr. John W. Craig, a vice president of ABCO, testified and he testified that they had never requested a license, that the inquiry was a purely hypothetical one. In that case there was an allegation of misuse of patents because of package licensing.

Based on the events related, in part, by this letter, that defense was rejected by this Court and it was rejected also by the Court of Appeals of this Circuit.

1305 Q. Now, that case was HRI against the ABCO Manufacturing Corporation, 227 F. 2d 137. Do you recall precisely what the Court said in dismissing the misuse defense?

A. No, I do not. I don't recall that. That is a published report.

Mr. McConnell: I object to what he recalls of it. If somebody said something which is relevant in this case and it is a court record, why, I think we are entitled to the record.

The Court: Well, I assume that he—

Mr. Diggins: I am speaking about the Court's opinion. However, instead of putting it in, we will call the Court's attention to it in our brief and with the appropriate quote.

By Mr. Diggins:

Q. You do recall the outcome of the decision?

A. The outcome of the decision was that that defense was rejected. The patents were held valid and infringed. An injunction was issued against ABCO Manufacturing Company, but it was settled by the payment of damages and interest for the preceding five years and the ac-
1306 ceptance of the then current license agreement.

Q. Now, Mr. Dodds, there has been a lot of discussion here in the courtroom about the hundreds of patents that Hazeltine holds in terrorem over the heads of some of these poor little companies. What part of those hundreds of patents are normally investigated, if you know, by a prospective licensee?

A. It has been my experience substantially none.

Mr. McConnell: I object to what is normal and customary and all the rest of it. The question is what they have been offering to us.

Mr. Diggins: I am asking him if he knows what is normal and customary and I think I have got a right to ask it.

The Court: The objection is overruled and the answer may stand. Let's get on with it.

By Mr. Diggins:

Q. Now, when a prospective licensee wants a license, how does this matter come to the attention of the
1307 Hazeltine Company?

A. Well, usually it comes in several ways: Perhaps the most usual way is that if a company is manufacturing television receivers and is not licensed an investigation will be made of the set.

The Court: By whom?

The Witness: By me or my associates.

The Court: The Hazeltine Company?

The Witness: By Hazeltine, yes.

By Mr. Diggins:

Q. In other words, is a set sent in to Hazeltine Research—

A. No, a set isn't sent in, but we get information about the sets from one source or another, make an investigation to determine what patents are applicable, and write a letter to the company and advise them that those patents are applicable, and it has been my experience in every instance that I have been involved in that the investigation by the prospective licensee is limited to the patents which are called to its attention.

Now, in addition to that there are some licensees, after they are licensed, that as a matter of routine check
1308 up periodically to see if they are getting their money's worth, and they send in information on sets and ask us to advise them. One company that used to do that very regularly was the Stromberg-Carlson Company. Most licensees, after they had taken a license, just forgot about it.

Mr. McConnell: I object to all of this. I can't see how we are bound by what he is doing over there carrying on his business.

The Court: This is a little background and you are not bound by it, but it does tend to explain this case a little better to me, and the objection is overruled. You are not bound by it.

1309 By the Witness:

A. I might state that as an example of this, I reviewed the 2,500 Exhibits which were selected by Counsel for the defendant in this case and just as a sample of that 2,500 perhaps two or three hundred related to the domestic licensing situation, and of those I counted a hundred and seven instances where detailed applications had been made of a small group of patents to a licensee or a prospective licensee's television receiver.

Q. Now, after Hazeltine has examined a company's circuit or set, a prospective licensee, have you ever brought a suit against that company on a patent which you didn't claim covered the set?

A. Clearly not.

Q. Now, there was some comment made earlier in the case—to what extent has the Hazeltine Company attempted to force licenses on manufacturers not using any Hazeltine patents?

A. To the best of my knowledge, no such attempt was ever made.

1310 Mr. McConnell: I object to that.

Mr. Diggins: That is a comment of Mr. McConnell's—

The Court: I don't recall any evidence that that was ever done. I think you are denying a bogey man that hasn't been raised.

Mr. McConnell: No.

The Court: I have no impression that they sued somebody that they didn't claim was infringing.

Mr. Diggins: I am never quite sure whether Mr. McConnell is testifying or not.

The Court: Well, of course, this is the only chief counsel that has been under oath. There has been some testimony not under oath from both sides.

Mr. McConnell: Well, I have been testifying from doc-

uments that are in evidence, if I have been testifying. What I am trying to say is that my testimony or my statements can be checked by the record in evidence, and I don't know how we can ever find out what this is all about. It would take—

1311 The Court: We have had the bogey man. Let's get on to something else.

By Mr. Diggins:

Q. Mr. Dodds, to what extent were you aware, if any, of the negotiations with the Zenith Company with respect to a monochrome television license?

A. I had personal negotiations with Mr. Crotty for a period of perhaps a month or two months prior to June 30, 1959, when their last license agreement expired, hopefully looking toward a renewal of that license, and that continued for a period, I think, of a few months after the termination of that license on June 30, 1959.

Q. Now, from that point on, what was your connection, if any, with negotiations with Zenith?

A. None.

Q. Not even as a consultant?

A. Not with negotiations with Zenith. I had consulted with people inside the Hazeltine companies.

Q. Well, now, during your connection with the negotiations with Zenith, a claim has been made, was

1312 Zenith charged with a suit for infringement if they didn't take the standard license?

A. Definitely not.

Q. If they didn't take the package license?

A. Definitely not.

Q. Did Zenith always have the power and the right to pick and choose what patents they wanted?

Mr. McConnell: I object to that. That is a question that the Court is going to determine on the whole misuse defense.

The Court: I would think that anything other than what he and Crotty said to each other, anything other than that would not be admissible from this witness. You may testify regarding anything said between he and Mr. Crotty regarding that subject matter, but beyond that he cannot go.

By Mr. Diggins:

Q. Mr. Dodds, has Hazeltine ever manufactured and sold commercial radio and television receivers?

1313 A. No.

Q. What is the business of HRI?

A. The business of HRI is exclusively research, development and licensing of patents on the inventions arising from that work.

Q. Are they in the manufacturing business any place in the world?

A. Hazeltine Research is not in the manufacturing business anywhere in the world.

1314 Q. Now, in the past thirty years, how many patent infringement suits have been filed by Hazeltine against dealers in radio and television apparatus?

A. Three.

Q. And who were those dealers?

A. The first one, I believe, was against Philco products, a wholly owned subsidiary of the Philco Corporation here in this Court.

The second one was involving Avco Manufacturing Company, the case which was previously referred to, in which their Chicago distributor was joined but which did not participate in the defense.

And the third is one now pending in the Western District of Virginia against the Firestone Tire and Rubber Company.

Q. Now, will you state the circumstances of those suits against dealers.

A. Well, I think I did state the first two. The circumstance of the last one was, this distributor was selected because it was selling television sets of two unlicensed manufacturers, and is was thought it would be a
1315 question of killing two birds with one stone rather than bring separate suits against the two companies. And the two companies have come in to defend the suit under indemnity contracts.

The Court: This was then a device; the dealer was a device to get at the two companies?

The Witness: I'm sorry?

The Court: I say, the suit against the dealer was a device to get at the two companies?

The Witness: Right.

The Court: All right.

By Mr. Diggins:

Q. Now, you are famailar with all of the Hazeltine patent litigation for the past ten, fifteen years; is that correct?

A. Yes.

Q. How many patent infringement suits has Hazeltine lost since the General Motors suit in 1947?

A. None.

1316 Q. Now, to your knowledge—

A. Excuse me. I might perhaps qualify that last answer to this extent. There was a suit in which Hazeltine was not a party but in which it had an interest, a suit by a man by the name of Lewis, also against Avco Manufacturing, that was pending about the same time as this other suit to which we referred. In that case, the patent was held valid and infringed by this Court. The Court of Appeals found it valid but not infringed.

Q. Mr. Dodds, we have discussed the formal written contracts between Hazeltine and CRPL, GEC, and Neutro-

dyne of Australia, so I am not going to go into the formal contracts. They have been discussed ad nauseum.

Do you know, or to your knowledge, has there ever been any understanding, gentlemen's understanding, with respect to the prevention of exports from this country under Hazeltine, license to Hazeltine patents?

A. There never has.

Q. If any one of your licensees exported to any
1317 place in the world, could you sue him for infringement under your U. S. patent?

A. No. Well, I have to qualify that—No. The answer is still no. Yes.

Q. If any one of your licensees exported to any country in the world, could you sue him for breach of his U. S. license?

A. No.

Q. Now, Mr. Dodds, I am going to call your attention to Exhibit 24—D 24, 27, 30, 34B, and 35. I will eliminate 35. So it is DX 24, 27, 30 and 34B.

Now, it has been previously testified that those are handwritten notes of Mr. Ruestow, each one of those Exhibits; isn't that correct?

A. Would you name those again.

1318 Q. 24, 27, 30 and 34B.

A. Just a second. 30—

The Court: And 34B.

The Witness: Yes.

By Mr. Diggins:

Q. And I believe that is all of them. I intended to include all of the handwritten notes of Mr. Ruestow.

Mr. Dodds, to your knowledge—well, let me put it this way. When did you first become aware of those handwritten notes?

A. When Mr. Ruestow handed to me a file of personal papers which he kept in his desk in response to the dis-

covery proceedings of defendant after this Court extended the discovery period up to May 22, 1963.

Q. They came to you, then, in connection with the discovery proceedings in this Court?

A. That is the first time I had seen any of those.

Q. Had you ever seen those at or about the time they were written, according to the testimony yesterday?

A. I say the first time I saw them was during the 1319 discovery proceedings which I just identified.

Q. To your knowledge, had anybody else in the company other than Mr. Ruestow ever seen them prior to the discovery proceedings?

Mr. McConnell: I object to that. He can't testify to what somebody else saw.

The Court: Objection sustained.

Mr. Diggins: I ask what he knew.

Mr. McConnell: I object to it.

The Court: It would be hearsay if he did know. The objection is sustained.

Mr. Diggins: If your Honor please, could I have a moment on that.

The Court: How would he know?

Mr. Diggins: Well, he might very well know, your Honor, that by seeing it on the man's desk, by having it reported back to him.

The Court: He just said that he never saw them until after May of 1963, didn't he?

Mr. Diggins: All right.

The Court: That's what he just said.

1320 By Mr. Diggins:

Q. To your knowledge, were those notes circulated in the Hazeltine Company?

Mr. McConnell: I object to that. He told us he never saw them.

The Court: He may answer that.

By the Witness:

A. I have no knowledge of anybody in the Hazeltine organization having seen these notes.

By Mr. Diggins:

Q. Now, I show you page 159 of the transcript, which is quoted from your testimony. I call attention to the top —the first question in quotation. Would you please—well, it has been read into the record.

What do you mean by "participate"?

The question reads:

"The British Pool agreement, in which GEC and Hazeltine participate,"—

What do you mean by "participate" in your testimony?

A. Well, I think this was a quotation—

1321 Mr. McConnell: Let's read the whole thing. I don't know what he is talking about.

The Witness: I think this is a quotation from a document, an Exhibit.

Mr. McConnell: Can you tell us what the document is?

Mr. Diggins: You can follow it from the transcript. I am quoting fro mthe transcript, Mr. McConnell.

The Court: What page?

Mr. Diggins: Page 159.

The Court: Page 159.

The Witness: It was deposition Exhibit 40, but I do not believe it is a trial Exhibit. I think it was one not selected at a trial Exhibit.

Mr. McConnell: Well, let's get deposition 40—

The Witness: The deposition Exhibits are on the table.

Mr. Diggins: I don't see any point of going into the deposition Exhibits. This is what Mr. McConnell

1322 read into the record for a couple of days.

Mr. McConnell: Yes. But don't you think I am entitled to know what it is?

Mr. Diggins: I think you should know what it is before you read it into the record.

Mr. McConnell: I did. That's why I read it in. But I want to know what you are talkingabout now when you are examining this witness.

The Court: Doesn't the transcript indicate what it is, Mr. McConnell?

Mr. McConnell: No, it doesn't.

The Witness: It indicates on the preceding page—the questions refers to Exhibit 40, and it continues.

Mr. McConnell: You didn't give me the preceding page. You told me 159.

All right. Go ahead.

By Mr. Diggins:

Q. What do you mean by "participate"?

1323 Mr. McConnell: Well, I object to that, explaining what he means by a common, ordinary word that anybody in this courtroom knows what it is. Participate—you've got a dictionary; look it up.

Mr. Diggins: Mr. McConnell, you had a witness on the stand, and we tried to find out what pool meant. You have been shouting pool in here for days.

Mr. McConnell: I will tell you what pool is, and I'm going to tell you in great length in my oral argument.

The Court: Well, there is all sorts of way of participating in various things. If this is an objection to this question, the objection is overruled.

By the Witness:

A. What was meant here was, the share of the pool income which General Electric collected on behalf of General Electric and Hazeltine patents, and in which, indirectly, Hazeltine shared by way of its agreement with the General Electric Company.

The Court: Let me say that prior to the time you
1324 gave that explanation, I assumed that that is what you meant, so let's go on, because the other evidence clearly shows that that is what it was.

By Mr. Diggins:

Q. Now, Mr. Dodds, I call your attention to Pages 215 and 216 of the transcript, and I would like to know to what extent, and for what subjects—the word here refers to negotiations.

To what extent or what subjects did you, and I quote—

The Court: I would like to hear the quote.

Mr. Diggins: Your Honor, let me read the question. Let me read it into the record for the benefit of the Court:

"I call your attention"—

This is reading from the Dodds deposition.

The Court: All right.

Mr. Diggins: (Reading.)

"I call your attention to the statement quoted in the fourth paragraph of this letter:"

That's Deposition Exhibit 76, Defendant's Exhibit
1325 76.

" 'It is our suggestion that Mr. Dodds, who is fully acquainted with our relationship with your company and, through you, with the Pools go to London to discuss the matter directly with oyu or whatever representative of your company will participate in the negotiations with the Pool.' "

Now—

The Court: Let me ask you if this is a letter to General Electric, Limited?

Mr. Diggins: This is a letter to General Electric Limited.

The Court: I mean, I would think it would be, but I would just like that verified.

Mr. Diggins: Yes. I am sorry, your Honor. I am trying to restrict this as much as possible. Maybe I'm doing too much.

The Court: Well, don't restrict it too much so that I don't understand what you are doing..

Mr. Diggins: I certtainly don't want to, your Honor.

1326 Mr. McConnell: And will you tell us who wrote it?

Mr. Diggins: The letter was written by Mr. Dodds.

Mr. McConnell: By whom? Mr. Binns, wasn't it, of the Hazeltine Company?

The Witness: No, it was not.

The Court: As I recall—and let me see how good my memory is—I think he wrote this letter for Mr. Binns to sign.

The Witness: For Mr. McDonald to sign. I wrote it for Mr. McDonald to sign.

Mr. Diggins: And it was addressed—

The Court: You dictated it and he put his name to it?

The Witness: Right.

Mr. Diggins: So in effect it was Mr. Dodds' letter.

The Court: That's the way I remember it.

Mr. Diggins: And at the bottom of Page 215, Mr. McConnell now states:

"That was your statement, wasn't it? That was your statement that you were thoroughly familiar with

1327 the Pool and the relationship of General Electric with the Pool?

"A. That was my statement which I wrote.

"Q. You were suggesting that you make the trip to England to sit in on the negotiations. Now, I ask you this: Did you make such a trip?

"A. I did."

By Mr. Diggins:

Q. Now, I want to ask, Mr. Dodds, on what subject and to what extent did you negotiate with the Pool?

1328 A. Well, directly I did not negotiate with the Pool at all. The Pool at the time was, as it has during its history, been run by a Pool committee. It had a permanent paid secretary, Mr. Topham. I did not negotiate with him.

Mr. McConnell: I want to object to this. This witness, a lawyer, is now going to tell your Honor what the legal effect of his conversations were. If he wants to ask him what conversations he had, and with whom, and what was said, all right. But he is getting out of his role as a witness now into his role as an advocate. And I object to it.

The Court: The objection is sustained to that part of the answer that starts to outline who runs the pool. I mean, you perhaps can testify that other than to General Electric, Limited, you didn't talk to anybody else in the Pool, if that is the fact.

By Mr. Diggins:

Q. To whom did you talk, Mr. Dodds?

A. Well, I talked to representatives of the General Electric Company primarily. There was one meeting, I believe—

1329 Mr. McConnell: I object to "primarily." That is his—

The Witness: I am qualifying it, Mr. McConnell, if you will let me finish.

The Court: He is about to put somebody else in.

Mr. McConnell: I know, and I know who it is, too.

The Court: Well, let's get it in the record, and then you will be happy.

By the Witness:

A. I also, in one of the meetings, included Mr. Dale-Harris, and Mr. Preston of Electric and Musical Industries, who, with General Electric, was also a member of the Pool.

The Court: I assume it is up to me, now, to determine whether he talked to the Pool when he talked to these two people.

Mr. McConnell: That's right. That is my objection exactly.

The Court: All right. Now we know who he talked to, and you make a note for your final argument that that is talking to the Pool, if you want to so advocate.

1330 By Mr. Diggins:

Q. Now, what I want to find out, what my original question was, on what subjects did you talk to, first of all, General Electric? That's GEC.

A. GEC I talked on two subjects; one, the prospective share of the Pool income which it would get on behalf of its patents and ours; and two, how that share would be divided between General Electric and Hazeltine.

Q. Did you negotiate with them on any other subject?

A. No.

The Court: Before we find out what he said to the other fellow, let's take our noon recess.

(Whereupon, a recess was taken to 2:00 o'clock, p.m. of the same day, February 25, 1964.)

1331 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—58-C-1847) * *

Before Honorable Richard B. Austin on February 25, 1964 at 2:00 o'clock p.m.

Trial resumed pursuant to recess.

Appearances:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1332 The Clerk: Case on trial.

LAURENCE B. DODDS, called as a witness on behalf of the plaintiff and counter-defendant, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Direct Examination by Mr. Diggins (Continued).

Q. Mr. Dodds, I believe we stopped with discussions with the people at General Electric Limited, GEC. Now, what subjects did you discuss with the representatives of the EMI Company on your trip to England, that is under discussion?

A. After joint meeting between representatives of the General Electric and EMI, to the best of my recollection, the only thing that was discussed was the amount of money which would be received for the Hazeltine and GEC patents. I cannot say positvely that no other subject was mentioned but, certainly, that represented substantially the entire discussion.

Q. Well, now, the quotation that I am asking you
1333 about was first in negotiations; what, if anything, other than money were you negotiating with the EMI and the GEC representatives?

A. Nothing.

Q. To your knowledge, did you talk to any other members of the so-called British Pool?

A. I am sure that I did not.

Q. So that your entire discussions were with representatives of those two companies?

A. That is correct.

Q. Did you enter into any negotiations with the British Pool or any member of the British Pool to keep the sets of Zenith Radio Corporation out of Great Britain?

A. Definitely not.

Q. Now, there is an ambiguity in the deposition which I would like to clear up, and it is from your deposition.

The Court: And the question is number what?

Mr. Diggins: The question is on page 139, and it is referring to the Canadian Radio Patents Limited, CRPL.

1334 The Court: All right.

By Mr. Diggins:

Q. And the question on page 140, a question by Mr. McConnell:

"Q. They have had a contract—"

They referring to CRPL.

"—have had a contract from 1943 to 1963, have they not?"

And your answer was:

"They have, yes.

"Q. During that time you have not been free to license your patents in Canada or anywhere else, have you?

"A. Canada or anywhere else."

What effect has the CRPL had on your rights to license your patents anywhere other than Canada?

A. None.

The Court: The answer may stand. There is no controversy about that, is there?

Mr. McConnell: No.

1335 Mr. Diggins: It's just a punctuation here, and there was some discussion. I wanted to clear it up, your Honor.

The Court: It didn't clear up anything in my mind. That was my assumption, even though I don't remember that specific question.

By Mr. Diggins:

Q. You mentioned that the Neutrodyne Company in Australia was a subsidiary of Hazeltine; is that correct?

A. It is a partly-owned subsidiary. Hazeltine does own a controlling stock interest in Neutrodyne Proprietary, Limited.

Q. Now, what is the name of the so-called pool in Australia?

A. The present name is the Australian Radio Technical Services, Limited, popularly known as ARTS.

Q. Is Neutradyne a member of ARTS?

A. No.

Q. Has it ever ben a member of ARTS?

A. No.

Q. Now, Exhibit DX-203, which is a letter from Arthur Warner, managing director of Electronic Indus' ies,

1336 Limited—now, who is Electronic Industries, Limited?

A. It is the owner of the minority interest of Neutrodyne Proprietary, Limited, and is one of the large manufacturers of electrical equipment in Australia.

The Court: And are they a member of the Australian Radio Technical Services—

The Witness: No.

The Court: All right.

By Mr. Diggins:

Q. And who is Mr. Warner? What relation does he have to Neutrodyne?

A. I believe he is managing director. Irrespective of what his official title was, he did manage Neutrodyne Proprietary, Limited.

Q. Sir Boss?

A. Yes.

Q. Now, in this letter DX-203, written by Mr. Warner to you, Mr. Warner states, and I quote:

"You will appreciate that I am the only remaining person in the Pool who has been there since the Pool
1337 was first started, which gives me a standing in the Pool and an experience which exceeds that of the others around the table."

Now, is that statement correct?

A. I believe—

Mr. McConnell: I object to that. Whether it is correct or not, this man can't characterize evidence in this case.

Mr. Diggins: He certainly can characterize a fact. This is a man from a controlled company.

Mr. McConnell: Joint partners.

The Court: The objection is overruled. He may answer if he can.

By the Witness:

A. The statement is certainly technically and legally incorrect. I think it represents a loose use of language by a layman.

The Court: Or perhaps an inflated ego?

The Witness: Perhaps.

By Mr. Diggins:

Q. Mr. Dodds, does Hazeltine have any British patent covering TV receivers in Britain?

1338 A. Not that I know of.

Q. Will you explain the fact that there are important patents in this country and none in Britain?

A. That is due to the difference of standards of positive versus negative modulation; primarily because of the differences in signal, different types of circuits are used to best advantage in the two receivers.

Q. When you grant—when Hazeltine grants a license in this country, do your licensees secure the right to use your patents in all of their receivers, TV receivers?

A. Yes.

Q. The patents covered by the license?

A. Yes.

Q. Now, there was some discussion and some questions about the effect a license in this country might have in a patent controversy elsewhere.

Can you point out to me a provision—and I show you, for example, the Magnavox agreement. Can you—or, wait a minute. I will take DX-2.

I will ask yo uto tell me, referring to DX-2, are any of your foreign patents included in that agreement?

1339 A. All foreign patents are expressly excluded from the agreement by Article II, Section 3(b).

The Court: Can you tell me what DX-2 is?

The Witness: I'm sorry?

The Court: What is DX-2?

The Witness: This is a Form 918.

1340 The Court: All right.

Mr. Diggins: I'm sorry your Honor.

By Mr. Diggins:

Q. Now, Mr. Dodds, still referring to DX-2, the form 918 agreement, will you tell me whether the licensee admits

the validity of any patents other than those listed in the license?

A. The pertinent clause is Article X, which is short, and I can read it:

> "The licensee during the term of this agreement admits the validity of and agrees that it will not voluntarily and knowingly, either directly or indirectly, aid or abet any attack upon the validity of the claims of any patent under which the licence is herein granted, and shall be enforced."

The Court: Isn't it the law without that clause being in there, that a licensee cannot attack the validity of a license?

The Witness: That is the general rule, your Honor, under United States versus Harvey Steel, but there are certain exceptions. And to avoid an argument, it is spelled out explicitly.

1341 The Court: All right.

By Mr. Diggins:

Q. Now, a licensee under that license—can you sue him for breach of contract for contesting the validity of your Canadian patent?

A. I believe not.

Q. Or a British patent?

A. I believe not.

Q. Or an Australian patent?

A. I believe not.

Q. Now, there has been discussion here about the Zenith-RCA suit, and I believe it was referred to the fact that there was a U. S. Pool between GE, RCA, Westinghouse, and perhaps some others. Was Hazeltine a member of that Pool?

A. No.

Mr. McConnell: I object to that. Whether they were or

not is one of the things we are going to determine in the lawsuit.

The Court: I didn't know that was an issue in this lawsuit. some American Pool.

Mr. McConnell: Well, counterparts of these companies GE, Westinghouse—

1342 The Court: I thought he said he was talking about an American Pool.

Mr. Diggins: You have talked about an American Pool, Mr. McConnell. That's what I'm asking about.

Mr. McConnell: I'm not claiming there is a Pool in America, if that is what you are talking about.

Mr. Diggins: You certainly referred to it.

Mr. McConnell: I object to any question about it. What is the materiality?

The Court: I mean, I just wondered if during that portion of the hearing I wasn't here. I don't recall any conversation about an American Pool.

Mr. McConnell: We are talking about a conspiracy which involves a patent Pool in Canada, England and Australia. But some of the acts were done here, as I will develop in the argument.

Mr. Diggins: If it is understood that there has been no contention and there is no contention in this case about
1343 any domestic Pool, I'm perfectly willing to withdraw any questions on it.

Mr. McConnell: I don't know of anything about a domestic Pool, do you?

The Court: I didn't hear about it. I thought it may have been one of my bad days.

Mr. McConnell. You are talking about the RCA domestic Pool I take it, and that issue is not being tried here. I did have an issue of that kind in the case down in Delaware.

Mr. Diggins: There were several times I didn't know what case we were trying here.

Mr. McConnell: Well, I don't have to persuade you of anything, my friend. The Court is the only person I'm interested in.

The Court: I mean, if there was a Pool, Hazeltine wasn't in it.

Mr. Diggins: All right. Let it go at that.

The Court: If there was a Pool.

1344 By Mr. Diggins:

Q. Now, there were questions about suits against a Zenith dealer in 1933. Will you comment on that.

A. I can comment on that, that at that time, it was shortly after one of the important Hazeltine patents had been sustained in litigation against the Atwater-Kent Company of Philadelphia. And after that time, suits were brought. I believe it was sustained by the Second Circuit Court of Appeals.

And after that time, certain other suits were brought in the same jurisdiction in which the patent had been sustained.

1345 Q. To your knowledge, have you sued any other Zenith dealers in the United States since that time?

A. We have not sued any Zenith dealers in the United States, certainly since 1934, when I became first associated with Hazeltine companies.

Q. You haven't harassed them?

A. We have not had any contact whatever with any Zenith dealer or distributor.

Mr. McConnell: Why don't you ask him if we weren't licensees until 1959.

The Court: I assume he is letting you have a little something for cross-examination.

Mr. Diggins: I am glad you brought that topic up. You reminded me.

By Mr. Diggins:

Q. Now, in your relations with the Zenith Company, what was the situation from 1934 to 1941?

A. In about 1934, I can't recall the exact date—I will have to go back to explain it. It is my information that some time in 1933 Hazeltine issued a license to Zenith on a temporary basis because of the fact that it was
1346 proposed to work out a new form of license agreement.

In connection with that temporary license a so-called "most favored nation" clause was given.

There was a dispute between the parties about the interpretation—

The Court: You don't expect me to know what that means, do you?

The Witness: Most favored nation clause?

The Court: Yes.

The Witness: The most favored licensee clause, just in general, at the sacrifice of accuracy, that if a patent owner later grants a license to another party under more favorable terms, the first party will get the benefit of the most favorable terms.

The Court: Now that you explained it, I know what you mean, but I certainly didn't under the phrase that you put in the record.

The Witness: I believe the—

Mr. McConnell: I object to this man testifying about written contracts. If we had a contract with them, I sub-
mit that the best evidence would be that contract and
1347 not this man's recollection of it, and a lot of hearsay along with it.

The Witness: It is not hearsay, Mr. McConnell, because I was engaged in part in that litigation.

Mr. McConnell: In what litigation?

The Court: The objection is overruled.

The answer may stand.

The Witness: Well, now, let's say that I don't think it is material, actually, what the terms of the parties were. All I was going to say is that there was a dispute between the parties as to what the contract meant, as a result of which an infringement suit was brought against Zenith Radio Corporation in this court, and in that infringement suit Zenith counterclaimed for a license involving their interpretation of the most favored licensee clause. The district court agreed with Zenith and held that they were entitled to such license. Such a license was granted. The Court of Appeals reversed and held that the license was on the terms which Hazeltine had urged, and the
1348 Supreme Court denied certiorari. That litigation continued up until, I believe, 1941 some time, and during that interval Zenith did not pay Hazeltine any royalties.

By Mr. Diggins:

Q. You say Zenith did not pay royalties during that period?

A. That is correct.

Q. So that is 1934 to 1941?

A. Approximately.

Q. Now—

Mr. McConnell: I think the statute of limitations bars that suit.

The Witness: We are not urging any suit.

Mr. McConnell: I object to going into all this back history of other litigation.

The Court: He said that this had some bearing on another question that he hasn't answered yet.

Mr. Diggins: If the Court please, one thing that this has a bearing on that I would like to bring out, Mr. McConnell in an aside just a few moments ago brought out
1349 the fact that Zenith was a licensee for a long period of time.

1350 The Court: I think that is in the evidence.

Mr. Diggins: I want to bring out to the Court that Zenith was a non-paying licensee and had to be forced into payment by a Court action.

Mr. McConnell: Well, if we are going to try that lawsuit, we will be here for ten more days. I object to going into it. Whatever it was it is all water over the dam and hasn't anything to do with this lawsuit. If you want to try it, we will try it, but I don't want to try it at this stage.

Mr. Diggins: We are not endeavoring to try another lawsuit, your Honor, we are not endeavoring to do it. We want to bring out to this Court, however—

The Court: Well, I assume that if Zenith owed you any money that the Courts are available to compel them to pay whatever they owe you, and I assume with Counsel as astute as Mr. Dodds that Zenith did pay you the 1351 money, if they owed it to you.

Now, let's go on to something new.

By Mr. Diggins:

Q. Now, we were discussing the ARTS Pool in Australia. Mr. Dodds, do you know how many types of license ARTS has at the present time?

A. To the best of my information, they have at least two and possibly a third.

Q. Well, what about the two? What is a "B" license, or what is the difference between a "B" license and a standard license?

A. I don't know whether you can call either one or the other standard. They have two forms of license, one with a "B" suffix and one without. It is my information that the license form without the "B" is issued to manufacturers, ordinary, usual run of the mill manufacturers, and that the "B" form is issued to small assemblers, local assemblers.

Q. Is there any difference with respect to imports?

A. Yes, the—

1352 Mr. McConnell: Your Honor, I object to that unless —we asked him to produce every license that he had from this Pool and he produced one, 1958.

Mr. Dodds: Your Honor, that is a mistake. The record shows, and in Defendant's Exhibits there are some five different forms produced from our files—

Mr. McConnell: Wait a minute. I don't mean you haven't produced more than one license. I mean you produced one for 1958 as all the licenses you had. Now, I object to your hearsay statement about what these licenses are.

The Court: I think that the best evidence would be the licenses themselves.

By Mr. Diggins:

Q. Mr. Dodds, we were discussing the difference between the "B" license, and the other license, and I call your attention to Exhibits DX 193, which is a license form in blank by ARTS and Exhibit 194, which is headed license six "B", which is also a blank form of license by ARTS, and ask you if those were the two licenses

1353 you were referring to?

A. Those were two of the licenses that I was referring to. There are in the record additional license forms very like the license numbered six, and I believe also like the license six "B", Exhibits DX 193 and 194 respectively.

1354 Q. But those were the two licenses that you were referring to?

A. That is correct.

Q. So that when Mr. McConnell says that the agreements speak for themselves, those are the two that we will have do the speaking.

A. Those are two of those that we have. There are some other "B" licenses and there are some other licenses without the "B" also.

Q. But these are two?

A. These are two of them, yes.

Mr. Diggins: I believe that's all, your Honor.

Mr. McConnell: No cross-examination, your Honor.

The Court: All right.

(Witness excused.)

Mr. Dodds: Your Honor, that closes the evidence for the defendant on the counterclaim. We have some motions to strike that have been reserved. I think it would be preferable to wait until the close of the plaintiff's case—

The Court: I was going to suggest that what may be called closing argument here also incorporate your 1355 motions to strike. I am interested, of course, in hearing from both of you on the question of whether there has been a conspiracy proved and that, of course, is a vital thing in regard to whether your motions to strike will be sustained or overruled.

Mr. Dodds: That is quite acceptable. Thank you.

Then that closes the case for the defendant.

Thereupon the plaintiff and counter-defendant rested its case in chief.

The Court: Do you have some rebuttal?

Mr. McConnell: I have just one witness in rebuttal, your Honor, Mr. Scott.

Thereupon the defendant and counter-plaintiff, to further maintain the issues in its behalf, introduced the following further evidence in rebuttal to wit:

1356 CUTHBERT SCOTT, called as a witness by the defendant and counter-plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state you full name, please?

A. My name is Cuthbert Scott.

Q. And where do you live, Mr. Scott?

A. I reside in the City of Ottawa, Canada.

Q. And are you a member of the bar in Canada?

A. Yes, I am a member of the bar of the Province of Ontario, and I practice law in the City of Ottawa, where I have practiced since I was called to the bar.

Q. Where did you obtain your schooling?

A. I obtained the degree of Bachelor of Arts from the University of Montreal in the year 1925, and I then attended Osgood Hall Law School, which was, at that time, the only provincial law school in Ontario, and I was called after graduation from Osgood Hall in 1928, I was called to the bar, and I commenced my practice of law in general practice in the year 1928.

1357 Q. Will you tell us what firm connections you have had right down to date, giving us what your present connection is.

A. Yes, I went into a general practice firm composed of some four partners, and I conducted—was engaged initially in general practice, but almost from the beginning I began to be called upon to some extent in industrial property matters, that is, patents, trademarks and copyrights, because the firm with which I was employed was being called upon by clients, mostly United States clients, in connection with these matters, and this was turned over to me as a junior lawyer, and in that way I learned, I hope

not at the expense of the clients, I learned something about the patent and trademark laws.

Q. Now, are you what is called a Queen's Counsel?

A. I am, sir, yes.

Q. How long have you been so?

A. I was made a Queen's Counsel in the year 1950.

Q. What is the name of your present firm?

A. My present firm is called Scott and Aylen.

1358 Perhaps I should explain that in the year 1952 the volume of my personal practice in patent and trademark matters had increased to such an extent that it didn't appear to have a proper place in a general practice firm, so I withdrew from the partnership in the year 1952. I was by myself for a short time and then I joined with Mr. Aylen and we formed the firm of Scott and Aylen, which is restricted—it is not restricted, but the practice is 85 or 90 per cent industrial property practice.

Q. And that includes patent and trademark matters?

A. Yes, Mr. McConnell.

Q. Now, have you some familiarity, gained through your practice and study of the laws in Canada, as to the terms and provisions of the Canadian Patent Act?

A. I have. Of necessity I have to be thoroughly familiar with the Canadian patent laws, including the Canadian patent statutes, and I appear in the Canadian courts and in the patent office in matters involving Canadian patent law.

1359 Q. Do you know something about the history of those patent laws?

A. Yes, I do, Mr. McConnell. I have made a study of the history of those laws fairly recently when I was asked to give evidence in this court, although, of course, I was generally familiar with the laws for years.

Q. Now, prior to 1923, was there a provision in the Canadian Patent Act which prevented the import of goods

which were patented under the laws of Canada from the United States into Canada?

A. There was. There were two mandatory provisions, one was that when a patent was granted the patentee was required within two years from the date of the grant to manufacture in Canada, and that subsection went on to provide that if a patentee failed to do so the patent was, by operation of law, voided without any petition of revocation.

The second provision was that if the apparatus or subject matter of the patent was imported into Canada more than 12 months after the grant of the patent, the patent was automatically voided. In other words, the pat-
1360 entee was given a grace period of 12 months within which to import the patented article to supply the demand.

Q. Now, was that situation changed in 1923?

A. It was. The Canadian patent—

Q. Tell us what happened in 1923?

A. I should perhaps explain that prior to 1923 Canada was not a signatory to the International Covention for the protection of industrial property, and Canada was, as will appear from what I have to say, was anxious to become a member of that community of nations and had applied in 1900, as early as 1900, for admission to the Convention, but it was pointed out that these mandatory provision in the Canadian Patent Act to which I referred rendered Canada ineligible for membership in the International Convention unless it was prepared to change its laws to accord with the tenets of the convention.

Q. Was that subject brought up in the debates on whether or not to pass this act of 1923?

A. Yes, it was.

I might perhaps explain that when the Canadian
1361 government decided to introduce a bill changing

these arbitrary voiding provisions of the Act, it was necessary to make some explanation in the House of Commons as to why these changes were desirable, or what were thought by the government of the day to be desirable.

1362 Q. I show you a report of the debates in the House of Commons in Canada with reference to discussion on this bill and ask you if you can identify any of that as a part of that debate and tell us who was making the remarks.

A. Yes. Mr. McConnell, you have handed me volume 3 of the debates of the House of Commons of the Dominion of Canada for the session of 1923. Those are the official debates, and the first word of explanation on the introduction of the bill to recast the Patent Act commences at page 2064 of this report, and the explanation was made by the Honorable G. A. Robb, who was at that time the Minister of Trade and Commerce, and he was moving the second reading of Bill Number 20 to amend and consolidate the Act relating to patents of invention.

Would you like me to read part of the explanation?

Q. Could you do that?

A. Yes.

"Mr. Robb: This Act has not been revised since 1903, about twenty years ago. A bill was introduced
1363 in 1920, but at that time, owing to other business and the lateness of the session, the bill was not pressed. The bill was again introduced in 1921 and it reached its second reading. I understand the bill had at that time been submitted by the government of the day to the Canadian Manufacturers Association and different public bodies interested, and that it had met with their approval. But when it had reached its second reading there was some objection from some individual manufactuerers and the bill was not pressed.

"Canada now desires to enter the Berne Convention

so that we in Canada shall be on the same basis with all the world. Incidentally, I might say that Canada's cost for maintenance of the International Convention at Berne will run about $5,000 to $6,000 per year, and that the revenue from the patents branch is about $250,000 a year. The experience of the officer in the
1364 administration of that department has convinced them that certain amendments to this Act are very desirable in the interest of the Canadaian public generally. The more important provisions in the bill relate to the manufacture and importation of patent inventions, and they will be found in clauses 40 and 41. It is thought that the proposed improvements to the Act will enable Canada to join the International Berne Convention and will improve the condition generally of Canadian eitizens in trade throughout the world."

Q. Now, subsequent to those debates, was there a new Patent Act passed?

A. Yes, there was, in the year 1923—well, this bill became law and constituted the patent Act of 1923.

1365 By Mr. McConnell:

Q. Now, were those provisions, those caveats against importation removed?

A. Both of those arbitrary provisions—or, I should say neither of the arbitrary provisions that apepared in the 1906 consolidation appeared in the 1923 Act. In place thereof, the Act provided that interested persons apply to the Commissioner of Patents for what was called a petition to supply, and the Commissioner, after hearing could call upon the patentee to make sure that the patented article would be available to the Canadian public. And that took the place of these arbitrary provision against importation and compelling a manufacturer within two years on pain of invalidation of the patent.

Q. Now, I call your attention to Article V-A(1) of the Convention which you referred to there in the debates.

A. Yes. I haven't a copy—

Q. You have no copy? I will give you a copy.

First, I want to ask you whether or not Canada is a
1366 signatory to that convention that I have given you?

A. Yes. Canada is—I am now looking at the Report of the Royal Commission on Patents which was entered as an exhibit yesterday, Defendant's Exhibit No. 221; is that correct? That's what it would appear to be.

And as Appendix D to that report, on Page 181, the Royal Commissioners have set out extracts from the Convention—not the complete Convention. And the extracts appear at Page 181 of the Royal Commission's report under the heading Article V-A.

Q. Wait a minute. I first want to find out whether Canada is a signatory to that.

A. Yes. Canada is a signatory to the Convention.

Q. And is the United States a signatory to the convention?

A. And the United States is a signatory. I might say that Canada became a signatory in 1935.

Q. All right. Now, you can turn to your section 5 (A) (1) and read it in the record, if you will, please.

1367 A. Article 5 (A), Subparagraph (1):

"The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail revocation of the patent."

Paragraph (2)—

Q. Now, wait a minute. I want to call your attention to the Patent Act there. I'm calling your attention now to Section 68 (d). Have you got your Patent Act there?

A. I have, sir, yes. Perhaps I should—it might assist to explain that after the 1923 Act, the next provision of the

Patent Act in Canada was 1935. And that is the act to which you are directing my attention.

Q. To which I am now calling your attention.

A. Yes.

Q. All right. I call your attention to Section 68, Subparagraph (d).

A. Yes.

Q. That has to do with the revocation of a patent, does it not?

1368 A. It has. And would you like me to read it?

1369 Q. Well, I am going to call this part of it to your attention.

A. Yes.

Q. It is the last clause. The first has to do with exercise of the foregoing powers which are referred to. A patent may be revoked, and then this qualifying clause which I am going to read to you:

> "But the Commissioner shall make no order or revocation which is at variance with any treaty, convention, arrangement, or engagement with any other country to which Canada is a party."

A. That is correct.

Q. Now, in your opinion, as a patent lawyer in Canada, is this Patent Act under that clause qualified by Section 5 (A) (1) of the Convention?

A. Yes, it is. And the proviso to Section 68 (d) is giving effect to Canada's obligation under Article 5 (A) (1) of the Convention.

Q. Now, in your opinion, would that clause in the Convention prevent the Commissioner from revoking a li-

1370 cense because goods were imported under it from the United States into Canada?

A. Well, I would put it this way, If I might: That the arbitrary provisions in Article 5 (A) (1) is modified some-

what in a later sub-paragraph of Article 5 that does permit revocation in certain circumstances; that is to say, after a compulsory license has been enforced for two years.

Q. All right. But supposing the Commissioner made an order revoking a patent simply because goods were imported from the United States into Canada. Would this Convention prevent such an order, in your opinion—

A. Yes. He would be powerless to make such an order.

Q. Now, you were here in the courtroom yesterday, I take it, when Mr. Henderson was testifying. And you recall he said that there were three risks involved in licensing importations—three risks to the patentee?

A. I remember that.

Q. By licensing importations from the United States into Canada for sale under Canadian patents of any 1371 goods in commerce—do you remember that?

A. I remember that, yes.

Q. Now, I call your attention to clause 68 (b), in which there is a proviso for exclusive compulsory license.

Will you tell us what an exclusive compulsory license would be?

A. Well, an exclusive license is, of course, a license that is exclusive to the licensee. An exclusive compulsory license is a compulsory license issued under the statutory powers which is exclusive to the extent that it virtually takes away the rights of the patentee. And that is explained elsewhere in the Act.

Q. All right. Now, I call your attention to provision 2, sub-paragraph (j), under the heading of Interpretation of this Act—that's back at the beginning of the Act, Mr. Scott.

A. Yes, Mr. McConnell.

Q. I call your attention to this definition:

"'Work on a commercial scale' means the manufacture of the article or the carrying on of the process

1372 described and claimed in the specification for a patent, in or by means of a definite and substantial establishment of organization and on a scale that is adequate and reasonable under the circumstances."

Now, I show you a document which was issued by Canadian Radio Patents Limited, and which is herein evidence as Defendant's Exhibit 138, which lists a number of manufacturers in Canada and provides:

"Under the provisions of Section 46 of the Canadian Patent Act, the owner of a patent and his legal representative have the 'exclusive right, privilege, and liberty of making, constructing, using, and vending to others to be used' the patented invention and Canadian Radio Patents Limited, in accordance with the requirements of Sections 67 and 68 of the Patent Act, has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers and other electronic equipment embodying in-

1373 ventions which it administers.

"The above companies are working the patented inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms."

Now, assuming that those statements are true in this notice, would that constitute a working of the patent, a commercial working of the patent under Section 2 (j) of the patent?

A. May I see the Exhibit?

1374 Q. Yes, you may.

A. Well, assuming the truth of the statement in this public notice, I would take it that there is work on a commercial scale of the patents in question, as defined in Section 2 (j) of the Patent Act.

Q. All right.

A. And my reason, if I may, for saying so is that the notice states first, in the second paragraph of the notice—it says that "in accordance with the requirements of Section 67 and 68 of the Act," which is the sections we have been talking about, "has licensed the following Canadian companies for the manufacture and sale in Canada of radio and television receivers and other electronic equipment embodying inventions which it administers."

Then it lists 31 manufacturing companies which, presumably, according to this, are manufacturing in Canada.

And then it goes on to say—many of these companies are apparently very large companies—then it goes on to say:

"The above companies are working the patented
1375 inventions in Canada on a commercial scale and are prepared and willing to meet the public demand for the patented articles in Canada on reasonable terms."

So I would say that if this is true, they must be doing that, and in that case, they comply with—

Q. Do you recognize any of the companies on there as companies that you know that manufacture in Canada?

A. Yes, I would say most of them. For example—just to name a few, Canadian Admiral Corporation, Canadian General Electric, Canadian Marconi, Canadian Westinghouse; there is some that I don't know quite well; Electrical Products Manufacturing; Electronic Enterprises, Limited; Emerson Radio.

Q. They are all substantial—

A. Yes. Monarch Radio; Northern Electric, a very big company; Nordmende Phoenix, Ltd., a European company with a Canadian subsidiary, and so on.

1376 Yes, they appear to be substantial companies.

Q. All right. Now, going back for a moment to the provision in the Act as to exclusive compulsory licenses, will you look at your copy of the Act there?

A. Yes. That is in 68(b)?

Q. (b), correct. Now—

A. Would you like me to— .

Q. Let me ask you a question first. I quote—

The Court: From what?

Mr. McConnell: I'm going to tell you. 68(b), the first sentence.

The Court: All right.

By Mr. McConnell:

Q. The first sentence in 68(b) of the Patent Act:

"If the Commissioner is satisfied that the invention is not being worked on a commercial scale within Canada".

Now, stopping right there, would you say from your knowledge of the patent law, and working with it and its various provisions and authorities under it, that that

1377 first sentence would constitute a condition precedent —that is, a finding that there was no commercial working of the patent as defined in the Act would be a condition precedent to the Commissioner issuing an exclusive compulsory license?

A. I would, without any hesitation. That's one of the conditions that must exist before he can consider the other conditions that are enumerated later in the section. That is the first one.

1378. Q. So, now, we have disposed of two of those three risks, have we not, that you heard Brother Henderson talking about?

A. Yes, I would think so.

Q. The third risk had to do with a non-exclusive license.

A. Yes.

Q. Now, under what conditions can the Commissioner issue a non-exclusive license?

A. Well, it should be remembered that before the Com-

missioner can take any action under the provisions of Section 67 of the Act, he has to find that there is what is called an abuse of the patent rights.

And in Section 67, subsection 2(a)(f), the six types of abuses contemplated by the Legislature when they enacted this provision are enumerated.

Q. All right. Now, you have examined those six years of abuses?

A. I have, yes.

Q. Now, in view of the fact that as we—and assuming that the facts are true in that notice, and that the patent is being commercially worked by manufacture in Can-
1379 ada, in your opinion would there be any abuse as defined all through Section 67 by importing goods from the United States into Canada under a Canadian patent?

A. I have no hesitation in giving it as my opinion that in the present circumstances, predicated on the notice that is filed as an Exhibit, and it is true, that there is no abuse on which the Commissioner could take any action on an application under Sections 67 and 68.

Q. Now, that is the non-exclusive compulsory license?

A. Yes.

Q. So that all three of those things we have dealt with; is that right?

A. Yes.

Mr. McConnell: You may cross-examine.

Cross-Examination by Mr. Dodds.

Q. On this question of abuse of the patent, you referred to a notice of CRPL, and you gave it as your opinion, I believe, that importation into Canada of radio and tele-
vision receivers would not be an abuse of the Ca-
1380 nadian patents, a license to import would not be an

abuse, under the circumstances set forth in that notice; is that correct?

A. That's right.

Q. And that opinion was based upon an assumption that the statements in that notice are true; is that correct?

A. That's correct, yes.

Q. And that if the statements in that notice are not true, then your opinion would not be valid?

A. Well, it would depend, Mr. Dodds, on the extent to which they are not true.

Q. Well—

A. I mean, I'm not trying to quarrel, but they can't be entirely false. It would be a matter of degree, I would think.

Q. Well, I refer to this statement particularly:

> "The above companies are working the patented inventions in Canada on a commercial scale and are pre-
> 1381 pared and willing to meet the public demand for the patented articles in Canada on reasonable terms."

Now, if that statement were untrue, then your opinion would no longer hold; is that true?

A. That is correct.

Q. Now, I should like to refer back to the Report of the Royal Commission to which you referred, and particularly to page 27. And I would like to read just two short passages and see if you have any reason to disagree with the statements there. Page 27, starting under Section 1:

> "Canada is a party to what is called 'The International Convention for the Protection of Industrial Property,' (to be referred to as "The International Convention'). That is the Union Convention of Paris, March 20, 1883 for the protection of industrial property, revised at Brussels on December 14, 1900; at Washington on June 2, 1911; at the Hague on No-

vember 6, 1925; and at London on June 2, 1934. A conference for revision was held at Lisbon in Oc-
1382 tober 1958 and certain further revisions took place. Canada has not signed the Lisbon revised Convention, but has the right to accede to it."

Then skipping to the next paragraph:

"In appendix D are set out extracts of the more important provisions of the Convention relating to patents. In these extracts we have arranged the text of the Convention as revised at Lisbon so that changes over the London 1934 revision can be readily observed. Using the text of the London revision as a basis, the matter deleted from the text is enclosed in brackets and new matter added by the Lisbon Conference is italicized."

To the best of your knowledge, are those statements correct?

A. To the best of my knowledge, they are correct.

1383 Q. All right. Now, let's turn to Page 179 of the report, Mr. Scott—I'm sorry, it is Page 181, to Article V, to which you referred.

Mr. McConnell: I don't want to interrupt your cross, but I do want to ask one question for the record. The exhibit which you put in evidence does't contain that matter. Now, are you going to put this in evidence?

Mr. Dodds: This is a copy—I understood it is marked as Plaintiff's Exhibit No. 50. Now, if there is two copies that have different—

Mr. Curtis: Here is the copy you gave us.

Mr. Dodds: I beg your pardon. That is 50-A. 50 is the complete report, as a physical exhibit. 50-A was excerpts.

Mr. McConnell: Well, was it in evidence? That's all I want to know.

Mr. Dodds: It is in evidence, yes.

Mr. McConnell: All right.

By Mr. Dodds:

Q. Now, Mr. Scott, I would like to read from
1384 Article V, Section A, and I would like to read it in accordance with instruction from Page 27, to give the text as it appeared before the Lisbon Conference. And would you check to make sure I'm reading it correctly.

Article V-A(1):

"The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail revocation of the patent.

'(2) Nevertheless, each country of the Union shall have the right"—

A. Excuse me. You are reading in the parenthesis.

Q. Yes. You see, the instructions on Page 27 said that the matter in parentheses was included in the London Conference and excluded in the Lisbon Conference, and the matter in italics was added by the Lisbon Conference.

A. Yes, I understand.

Q. So, Paragraph (2):

"Nevertheless, each country of the Union shall have
1385 the right to take the necessary legislative measures to prevent the abuses which might result"—

A. I beg your pardon.

Q. (Continuing.):

"—to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent; for example, failure to work.

(3) These measures shall not provide for revocation of the patent unless the grant of compulsory licenses is insufficient to prevent such abuses."

Now, does that correspond to the text of the London Convention, to which Canada adhered?

A. Excuse me one minute. It is my understanding that I would have thought so. I haven't—I don't know the terms of the Convention to that extent.

Q. You will accept the statement in the Report of the Royal Commission, would you not?

A. Providing there isn't an error—no, I won't accept it—

Q. You will accept it subject to correction?

1386 A. There may be errors in it.

Q. You will accept it subject to error?

A. Yes.

Q. You have referred to it yourself, I believe, in your testimony.

A. I just referred to it because it was a convenient way. It was an exhibit. It was a convenient way of referring to Article V-A(1), because it was already an exhibit—

Q. And that is the same article to which I have been referring?

A. Yes.

Q. So we can assume it is correct?

A. And I assume it is correct. Of course, I haven't—if I may say, I haven't compared it with the official text of the Convention, wherever it is contained.

1387 Q. Now, Mr. Scott, you were here, I believe, when Mr. Henderson was testifying. And I would ask if you heard this question and answer, and I am referring to page 1095 of the transcript:

"Q. Do you know of any decision of a Canadian court which particularizes on what constitutes an abuse under the section of the Canadian Patent Act?

"A. Yes, there are several cases relating to the abuse section. The most recent case is that of Rodi and Weinenberger versus Metalliflex, Limited, which

is reported in the 1963 Exchequer Court Reports. That is the most recent case. The one immediately before that, that was reported in the Ontario Courts on an appeal from the Commissioner was that of Gordon versus Callwood. Both of these cases were decided by the same court, Exchequer Court, Mr. Justice Thurlow in each case. There have been a series of them over the years. I have only given you the two
1388 most recent decisions of the Exchequer Court.

"Q. And what was the interpretation which those decisions placed upon this question of abuse of the patent rights?

"A. Well, they dealt primarily with the first paragraph, that is, Subparagraph (a) of Sixty-seven, Subsection 1, and that is what we call our working section which requires that there be manufactured in Canada a substantial and definite establishment and adequate and reasonable extent." I see a slight error in transcription.

"Manufactured" should be "manufacture" without the "d" on the end.

"The word 'adequate' is a word that has been indicated to be elastic in its connotation, and there has been some judicial expression in England on that point, and that is in the McKekni case where it was indicated that the manufacturer in Canada"—that
1389 again should be "manufacture"—

"in Canada should be reasonably close to the demand for a patented article in our country.

"The two Canadian cases to which I referred adopted that reasoning of the McKekni case, and that is to say that the manufacture in Canada should be reasonably close, should bear a reasonable resemblance to the demand for the patented article.

"Q. To avoid abuse?

"A. To avoid abuse. In other words if the manufacture is not to that extent, then there has been an abuse under that paragraph."

Now, that is a long paragraph. I would like to give it to you to let you read it, and then I should like to ask you some questions about it.

A. Yes. I remember Mr. Henderson saying this, and I think I am quite familiar with it.

Q. I have a simple question. Do you agree with it?

1390 A. Do I agree with what Mr. Henderson said?

Q. Yes.

A. Subject to this qualification: That the quotation from Mr. Justice Luxmore in the McKekni case was in Mr. Justice Thurlow's judgment obiter. Because of the facts before him in the Gordon-Johnson and Callwood case, there was no manufacture in Canada until the petitioner for compulsory license filed his petition. And the patentee quickly took steps to set up manufacture. And I haven't the reports in front of me, but if I remember, the holding of the Exchequer Court was that the first attempted manufacture in a patent that had been in existence for a number of years was obviously to defeat a compulsory license.

Now, it is true, he did go on and quote it from Mr. Justice Luxmore in the McKekni case. But I would say in those cases it was obiter dicta.

In the Metallifex-Rodi-Wienneberger case, I would

1391 distinguish Mr. Justice Thurlow's statement on this to which you have directed my attention in the same way. In that, what happened there, the German manufacturer—West Germany—Rodi and Wienenberger, it is true, set up—stated by supplying the Canadian market from Germany. Then it set up a Canadian manufacturer, but the court found they had deliberately priced the Canadian made article so high that people were buying the article which the patentee was importing from Germany. So that

with great respect to Mr. Henderson, I don't think that Mr. Justice Thurlow really had to consider what was adequate manufacture, because in neither case was there any manufacture in the strict sense.

1392 Q. With those qualifications you agree with Mr. Henderson's statement?

A. Yes.

Mr. Dodds' That is all.

The Court: Anything further?

Mr. McConnell: I have nothing further.

The Court: All right. Thank you, Mr. Scott.

(Witness excused.)

Mr. McConnell: That is all, your Honor. We have nothing further.

The Court: All right. Now, I assume that—I would like to work the rest of the afternoon, that is, up until 4:30, and then we will finish up in the morning.

Mr. McConnell: That is all right.

The Court: All right, the order of argument—

Mr. McConnell: I would like to have a few minutes to get my papers together.

The Court: We will take a recess.

Mr. Dodds: There is just one very small open item. Do you recall that Mr. Wright supplied some stacks of papers on production in different countries. I totaled

1393 them up last night and they all seemed to be in order except Canada, and instead of showing a total production of some 30, 40 or 50,000 sets, it shows a total production of sixty-five. I think there was something missing there. That is still open, but I am sure it will be reconciled.

The Court: There seemed to be a discrepancy in the figures that he couldn't account for, but I didn't think they amounted to that.

Mr. Dodds: I think you are thinking of a different point.

This hasn't been before the court. I spoke to Mr. Curtis during the recess. I think there is something obviously missing and we don't know just yet what it is.

The Court: All right, let the Marshal know when you are ready to proceed.

(A short recess was taken, after which the following further proceedings were had herein:)

The Court: You may proceed.

1394 *Closing Argument on Behalf of Defendant and Counter-Plaintiff by Mr. McConnell.*

May it please the Court, Mr. Dodds—

Mr. McConnell: I want to say at the start of this argument, and I think that what I say is for all counsel, that I certainly have appreciated the courteous and attentive hearing that we received from this Court. When I say that I am sure that goes for all counsel, it does for myself, but I sincerely appreciate it.

We have traveled through a lote of territory. We have gone a long way with our proofs, and I can understand that in the haste that we have had to make that your Honor has not had a chance to see the documents and see the underlying documentary evidence upon which our position is founded, and without that, in many instances, I am quite sure that your Honor has wondered what in the world these people have been talking about.

Fundamentally, we have been talking about three conspiracies to restrain trade or restrain commerce be-
1395 tween the United States, or a company in the United States, and foreign markets. And as I pointed out in my opening statement that, under Section 1 of the Sherman Act, is an express violation of the Sherman Act, and under the cases which I will briefly advert to in this argument and which we will more thoroughly explore in the brief, that is a per se violation, the cutting out, exclusion from the market, is a per se violation of the Sherman Act. And it makes no difference how that is done, whether it is done by perfectly legal actions standing alone, whether it is conduct that might be justified by an individual patentee dealing only with his own patents, or what might happen in other situations, I think I will be able to show have

no bearing on what should happen and must happen under the applicable rules in the instant case.

1396 Now, there have been various diversions and various statements and various theories sort of tried on for size by my opponents in the course of this proceedings, and I am sure that your Honor has not been diverted by them and is not enamored of them, or is not thoroughly familiar as to their inapplicability to what I am about to address myself to; for example, the talk about selling something or renting something out in Nevada where it is legal to engage in gambling as compared with what has been presented by the evidence in this case.

In the old accepted term and old accepted form or thought of conspiracy, it was conspirators around a table in peaked hats with the shades drawn and conspiring in secret, and that definition doesn't quite fit the business conspiracies with which we have to deal in modern-day life. And our decisions have recognized that, and I am not going to argue law at this time, but just to have before your Honor, as I discuss these facts, what I am trying to accomplish and have been trying to accomplish throughout the hearing of this case, I want to call your Hon-

1397 or's attention to the Interstate Circuit case, which was the father of all of this law, which is a decision of the United States Supreme Court in 306 U. S. 208-226. There the Court said:

> "While the district court's finding of an agreement of the distributors among themselves is supported by the evidence, we think that in the circumstances of this case such agreement for the imposition of the restrictions upon subsequent-run exhibitors was not a prerequisite to an unlawful conspiracy. It was enough that, knowing that concerted action was contemplated and invited, the distributors gave their adherence to the scheme and participated in it."

Now, another diversion that has been raised in the course of these proceedings is that Hazeltine doesn't manufacture, that it is only licensing its patents in the only way available to it and that, therefore, it doesn't make any difference what happened as between the pools themselves—if they weren't a stockholder in the pool then we don't have to concern ourselves with that. Well, now, it is very interesting, but on all of these antitrust cases we have to refight, reargue, rework law which has been settled many, many times before.

1398

In United States against Paramount, 334 U. S., the Supreme Court said for distributors who didn't have any theatres, who said they had no motive to be in the conspiracy, who said that all they were doing was selling their film in the only way available to them the court disposed of that with this suggestion:

> "There is some suggestion on this as well as on other phases of the cases that large exhibitors with whom defendants dealt fathered the illegal practices and forced them on to defendants. But the District Court observed that circumstances if true do not help the defendants. For acquiescence in an illegal scheme is as much a violation of the Sherman Act as the creation and promotion of one."

1399

Now, with that I am going to leave the law and get to a discussion of the facts in this case, which establish, in my humble opinion, not just a prima facie case of conspiracy but—ond, by the way, there hasn't been any defense in this case at all, as I will develop—but an absolutely conclusive, uncontrovertible finding, a showing of a conspiracy to restrain this particular commerce .

The Court: Let me, at this point, suggest to you something that troubles the Court. Assuming that there has been proof of a canspiracy, the normal conspirators in such a conspiracy would be the members of the Pool themselves.

As I understand it, Hazeltine is not a member of any of the three Pools involved, and along the way, if you would address yourself to that, I would appreciate it.

Mr. McConnell: That is right, and—well, I will address myself to it. I am getting right to it in the course of this.

The Court: I am sure you will.

1400 Mr. McConnell: It comes under the heading of the case that I just read that acquiescence, going along with an illegal scheme and profiting from it with knowledge of its intent and purport puts you in the conspiracy whether or not you happen to be a stockholder or happen to be an original former of it or not. And the law is absolute conclusive on that subject.

Now, first, we start here with the Canadian Patent Pool, and in 1927, which was after the time when the Patent Act up there was changed so that importation was permitted, certain manufacturers joined together to create a Pool. Now, we have evidence here that they had among them, and they put into that Pool some 5,000 patents, and we had the finding of the Commission, which we heard about yesterday, that in the face of all of those patents and the threat of litigation which those patents could generate it was impossible, as a practical matter, for anybody to manufacture anything in the United States or any other foreign country and import and sell it into Canada without

1401 such risks that would discourage responsible people from attempting it in the face of the activity of the Pool which was there described as enforcing their patents against anybody infringing them. It was also disclosed there, and the other evidence discloses it beyond peradventure, that no one who didn't manufacture in Canada could get a license from that Pool which controlled 5,000 of the patents which bracketed this entire field unless they did not import. You couldn't get a license no matter what you paid, no matter who you saw, you simply could not

bargain and obtain a license to import your product from the United States into Canada.

And we had Mr. Wright testify as to his attempts to obtain such a license. We had the testimony of Mr. Crotty who said he talked with Mr. Brian McConnell from the Pool, and Brian McConnell told him that, that they were infringing their patents up there, and yet they couldn't get a license to do the business that Zenith was doing,
1402 namely, manufacture and exporting their sets into Canada. It was impossible. And that is commerce between the United States and Canada which was being stopped and which was being interfered with by a group of manufacturers who were competitors.

1403 And I am going to point out by taking up these companies one at a time to show how they are counterparts of companies doing business in other sections of the world; Canadian General Electric, the wholly owned subsidiary of General Electric of the United States; the Radio Corporation was up there putting its patents into the Pool. They weren't a stockholder in the Pool, but they were in the conspiracy through putting their patents in the Pool. And, by the way, here we have this proceeding against RCA by the government with a consent decree which the Defendants put in evidence which shows that RCA, who never had any stock holding interest in the Pool in Canada, whose only participation was just like Hazeltine, of putting their patents in the Pool and in the manner preventing them from being licensed to any exporter from the United States into Canada so that they could sell the product in Canada, that was their participation in the Pool. And as the pleadings show, that is what they were charged with, and Hazeltine was named as a co-conspirator in that. That is what they were charged with. That is what they pleaded
1404 guilty to and that is what they entered into a consent decree on account of.

And the same charges were involved in the Zenith case. RCA puts its patents in the Pool, not that they were stockholders in the Pool. But we have five companies who own the stock of this Canadian Radio Patents Limited who not only pooled patents, but who cut off any competition in Canada against their respective manufacturing and sale of their products in Canada. They are the counterparts of American companies in all except one instance, and that is the instance of the Standard Company, which is a wholly owned subsidiary of the Philips Company of Holland, which is the largest electronic company in the world with the possible exception of General Electric.

The other members were Northern Electric, which is a producer of radios and televisions up there in Canada, which is a subsidiary of the American Telephone Company, an American company, wholly owned subsidiary.

1405 The Canadian Westinghouse Company, a wholly owned subsidiary of an American company.

There is the Philips Company and there is the Marconi Company, which was one of the largest electronic firms in the world arising originally out of the English Marconi Company. And those were the stockholders, and we don't have to speculate about these people getting together. We have in the evidence a copy of their memorandum agreement going way back to the formation of them on the 19th day of January, 1927.

The General Electric Company had 6,250 shares.

The Marconi Company had 6,250 shares.

The Westinghouse Company had 6,250 shares.

The Northern Company, the subsidiary of the American Telephone Company, had 6,250 shares.

And the Standard Company, the subsidiary of Philips, had 2,500 shares.

Now, under this agreement which is here in evidence

these companies pooled their patents and they signed
1406 it and they sealed it, and from the very beginning
their manager and their people that ran it, and it was run largely by the General Electric Company, they refused to license anybody to import into Canada. And they were all producing companies and they were all excluding competitors from them to the use of these patents which they then owned.

After the original formation of it other companies came in with their patents, implemented it, built it up so that they controlled every patent that could be possibly used in this field against anybody who attempted to export their goods and sell them into Canada, and the Zenith Radio Company was completely and effectively and utterly stopped from doing a business which under the laws of this land, at least, they had a right to do free of any conspiracy, and here are the counterparts of American companies. It is inconceivable that these companies up there as just alter egos of American companies could be doing these things without the full sanction, knowledge and cooperation of
their American parents.

1407 Now, that is the setup at the time we get interested
in the Hazeltine Corporation. The Hazeltine Corporation first tried to do business or wanted to do business and get in this pool through Philco, and we have evidence in this record that they first had a transaction and a contract with Philco, and then that expired. And when it expired Mr. Binns, the president of the Hazeltine Company wanted to get into the pool, and he sat down and wrote a letter to Mr. MacFarland up in Toronto, who was a General Electric man running this pool, and said that he was now in a position where he could negotiate to put the Hazeltine patents in this pool.

Here we have a combine, not something we infer, something reduced—this is something that you hardly ever see

in the world any more, conspirators sitting around a table—not only sitting around the table, but signing an agreement of their conspiracy, combining together to use their patents and implementing it by refusing to license, cutting off trade between that country and another country.

And here comes Hazeltine. They want to get in it.

1408 Now, Mr. Dodds has put on quite a performance here in this courtroom. The way he has described it in his statement to the Court and his interjections and his interpolations and his comments, you would think that he was just walking around with absolute naivity, not knowing anything that happened in this world, not knowing what happened up in Canada, not knowing there was anything that could be criticized about getting his patents in that pool.

With reference to England, he says that all he was trying to do was make some bucks for Hazeltine. Well, you can make bucks legitimately and you can make bucks illegitimately, and it is our contention that Hazeltine has been attempting to make these bucks illegitimately in the worst kind, the most vicious kind of a conspiracy, and that they went into it with their eyes wide open.

Now, I had Mr. Dodds on the stand in his deposition, and he gave me quite a runaround. And if your Honor will read that deposition you will see that I tried to pin

1409 him down to his knowledge of what he knew at the time that they entered into their contract in 1943, and I can't—I have got the transcript here, but I am not going to thumb through all of this to get these transcript references, but I remember it very well, because I examined him and I asked him what he knew at that time and he said he knew just what he knew before. And I said, "What was that," and he said, "Nothing."

Now, you would think that the man and his company got into this without any knowledge at all of what they were doing. He is absolutely naive. He hasn't any knowledge of what these things mean.

The trouble with it is that we had some documents. If we hadn't had any documents in this case, we would have been in real bad trouble.

But in 1940, three years before this company got into this pool, and if they got their patents in it and if they got money out of it, and if they received the receipts from it, which were created by the pool, they certainly are in it under any definition and any decision that I know
1410 about, and I am going to read the decisions and they will be in our briefs, and there isn't any question about the law, and I wouldn't assure your Honor so firmly and absolutely with such definitiveness if I didn't know that I was speaking the absolute truth on the law. There isn't any question that if you get into that kind of a pool with your patents you are in it, and it doesn't make any difference how you got in, if you know about the scheme, if you know what it is doing and you get in it for profit, you are in it.

Now, did they know about it? Well, we don't have much trouble with that question. On May 2nd, 1940, a company by the name of Trav-Ler Radio and Television Corporation, by a Mr. Lempski wrote to the Hazeltine Corporation and they asked:

> "We have had a few inquiries from prospective customers in Canada. Please send us any information you have regarding Canadian patent rights. We would like to know if we can sell our merchandise and if there is any Canadian law which does or does not permit the sale of the same. Any information that
> 1411 you can supply us with in this regard will sincerely be appreciated.
>
> "Awaiting your early reply, we are
>
> "Trav-Ler Radio and Television Company."

1412 Now, here is the man who has been walking around in a fog. He didn't know anything. I couldn't get the

time of day out of him of what his knowledge was of this pool in my cross-examination up to the time they got into this thing, and here is what he says—and he is laughing now, and in the deposition he said that he was in the pool, he knew about the pool and he was going to stay in the pool. Courts, laws mean nothing. He is going to be there and he is going to stay there, and he just gives an open challenge to the Court and to everybody that deals with him, that that is where he is, that is where he is going to be. He took the money out of it. He knew what they did, and it is perfectly all right with him. The more money that he gets out of it, the better off he is.

All right, what does he say? He doesn't know anything about it.

> "This is in answer to your letter of May 2nd with respect to Canada. A group of patents generally corresponding to those owned or controlled by Radio
> 1413 Corporation of America is vested in Canada in the Canadian Radio Patents Limited. This company has a number of licensees in Canada, and it is my understanding that they will not license sets for importation into their country. They are located at 159 Bay Street, Toronto. Perhaps you can write to them direct."

He didn't know anything about it. He knew what the organization was. He knew that they restricted their licenses so that nobody could import sets into Canada, and with his eyes wide open he and Mr. Binns, his president, entered into an agreement with the pool, and that agreement was executed on the second day of July, 1943, and is in evidence here as Defendant's Exhibit 118.

When I asked him on his cross, either his cross here—I think it was here in this court, "Who drew this document?"

The Court: I don't think you cross-examined him in this courtroom.

Mr. McConnell: All right, either in his deposition or in his cross-examination I asked him the question, "Who drew this document?"

And he said, "Canadian Radio Patents Limited."

So the language that I am going to read is theirs, and he joined into it, his company did, went forward with it, knew what the licenses were that they were issuing, and participated in it. "Participated" is a good word. We had a definition of "participation" from the witness, Mr. Dodds.

> "The licensor hereby grants to the licensee for the term of this agreement the exclusive, indivisible license with the right to license others to make within the Dominion of Canada license apparatus specified in Section 2 hereinafter and to sell said apparatus made by a licensee or its sublicensees to others for the uses specified in Section 2 hereinafter, and for resale for such uses. Said license to manufacture includes the right to make all or any of the separate parts and rights to have all or any of the separate parts made by others. But no license is granted to sell parts separately except as a bona fide repair of used license apparatus or replacement of worn-out or defective parts."

Pursuant to that, all of the patents which Hazeltine then had—and that was signed by Mr. Dodds, by the way. He was on there along with Mr. Binns. Canadian Radio Patents Limited was signed by Mr. Brophy and Mr. MacFarland.

Now, under this license he gave this pool an exclusive right to these licenses and to make sublicenses under them. And he knew at the time that he did it the kind of a license that they were going to make; that they were going to exclude imports.

Now, we have got here all of the licenses which they used

from year to year, and there isn't a single one of them, after these people got in this pool, there isn't a single one of them which does not have a caveat against a license to import—every single one of those licenses.

1416 I am not going to read the early ones. Those licenses which are issued by the Pool provide:

"Section 1. The licensor hereby grants to the licensee upon the terms and conditions hereinafter set forth a personal, indivisible, nontransferable and nonexclusive license only for the licensed apparatus hereinafter specified and defined, only as follows: To manufacture licensed apparatus in Canada and to sell or lease licensed apparatus so manufactured; and (b), to have licensed apparatus manufactured in Canada for the licensee and to sell or lease such licensed appartus so manufactured for the licensee subject to the payment of royalties thereon by the licensee as provided in Article III hereinof. Such licensed apparatus shall be deemed to be licensed under this agreement at the time of sale or lease by the licensee."

There was no other kind of license ever granted by
1417 that pool from the beginning of time down to date, from the beginning of the company in 1927—never—right down to the date of this lawsuit.

Just before this lawsuit, we had a call from Mr. McConnell, Brian McConnell, from up in Toronto, in which he asserted against us patents of Canadian Marconi, of the Philips Company, and of Hazeltine, and told us we had to have a license. What he was telling us was we couldn't import. We had to establish a factory up there and then apply for a license. We couldn't get a license to import. That was out.

But a very interesting thing in that offer—not only

interesting from the fact that just prior to that Hazeltine had been out talking to Mr. Crotty, which they had been asserting their patents—they say they didn't threaten a lawsuit, but we got sued right after we didn't take their license. They were asserting a Hazeltine patent, a different one than the one the pool had, but the pools had the same one that is in suit here.

We have a lot of double talk here about whether
1418 the patents are the same because of different laws, but the invention is the same. There is no difference in the invention. The specifications, the inventions are exactly the same in the two countries. And I defy Mr. Dodds to point out to the Court where the specifications in the Canadian patent are any different or cover any different invention than the specifications in the American patent.

And they come to us and threaten us with suit. It is obvious it was a threatened suit. We got sued right after the talk. Mr. Crotty said that it was clear that he either took the license or he was going to get sued.

And then the Canadian people come at us again, too. And Hazeltine is in the pool up there and there is a very strong inference of the two things working together. But I don't have to prove that there was such. It is just a clear inference that arises from this record that the two things are working together, and with understanding. And we have in this evidence complete cooperation between
1419 Mr. Dodds, Hazeltine and the Pool. Whenever they wanted to sue somebody up in Canada for infringement, they called on Mr. Dodds to pick out the patents which would be good for suit by the Pool—not by Hazeltine, but by the Pool.

1420 And then they were reporting, the evidence shows, back to manufacturers, dealers, Canadian dealers, showing how they kept out importers. They kept out

people who might cut prices or furnish competition to them up there, or might create an open or competitive market in this product. They report to them. The Pool goes and reports to these people, and those documents are all here in the evidence showing that the purpose of this pool was not just to realize the most from patents, or to cut out patent litigation—they have had plenty of patent litigation. The purpose of the pool, as shown by the documents throughout this whole Canadian documentary record, it to stop competition from any source against these people who had organized this Pool, who had put their patents into it, and who were maintaining and policing the entire industry.

And that was the situation which faced Zenith Radio Corporation when we brought our suit against RCA, General Electric and the Telephone Company, the American companies who were running the pool—not running it in Canada; they were running it right in the
1421 United States, and that's what the Government alleges, too, that the American counterparts are running through their alter egos up there in Canada, this situation.

Now, when we come down to how these people got in the pool—and I am speaking of Hazeltine now—Mr. MacFarlane came down from Canada, and they discussed this in New York, and they talked about their terms, and they talked about what they were going to get out of it and what the pool was going to pay them. And they knew, they hadn't the slightest doubt—nobody can read this record, it isn't completely naive, and not understand that these people—your Honor referred to this man as astute. Certainly he is astute. He has been all over the world in these pools. His footprints are all over; his fingerprints are all over the documents. He has been everywhere. He knows them inside and out.

And when he wrote that letter which he was examined on this morning, when they said that he knew the pools—
it was supposedly written by Mr. Binns, but he dic-
1422 tated it; he was speaking from personal knowledge.
He knew all about the pool.

It wouldn't take a very bright man to know what was going on in those pools. But he wanted some money for Hazeltine, and that was the easiest way to get it. And he went and not only got in because—in the movie cases, some of these people couldn't sell their films in any other way; they had to get in. That's what they said, and there was some evidenceto justify it. But these people went looking for this pool; they sought it out.

They set up the interviews in New York whereby they set down and entered it with full knowledge of what the pool was doing, and how they were doing it, and all the facts and circumstances.

There isn't a single fact in this record about this pool —as far as its makeup, who owned it, what patents were in it—that they didn't know at the time they went into it. And I asked Mr. Dodds on his deposition whether he knew they were in there, and whether he knew about the re-
strictions, and whether he went forward after the
1423 knowledge, and whether he took money from them
after knowing that; and he said, yes, and he said he was in the pools, and he was going to stay in the pool.

1424 Now, there was another very interesting and very peculiar and very, I think, unique situation. I don't know where you will ever find it again in a lawsuit, but companies who had been in this Pool—RCA, General Electric, and the Telephone Company—after they had come to grips with our lawsuit, and after they had told us repeatedly that nothing could be done to the Canadian Radio Patent Pool, no licenses could be issued except on certain terms, and that was it would be import—no difficulty about

it, when it came to the settlement of the lawsuit, about getting the license up there to import from them. But we were still subject and we were still left exposed—Marconi's patents, Philips of Holland patents, Hazeltine patents, thousands of patents.

Now, Mr. Dodds has put on quite an exhibition here about inconsequential or insignificant patents, he calls them. He would have your Honor believe—while we brought out that they have registered in the United States at least five hundred patents down through the last
1425 five or six years, and they are all in the Pool, they are all up there in Canada at the disposal of the Pool, and they are all electronic patents—he would have your Honor to believe that all of those patents which he always includes in his package license, and is included in the package license of the Pool—that they don't mean anything at all.

To a man who is trying to run a business, the threat of all those patents on his business, on his distributors, on the people that he does business with—they saw what the threat was in that Commission up there. As a practical matter, it is impossible to do business in the face of a thing like that. All they have got to do is write a letter like they wrote, and say they have the patents of the Pool—a notice to somebody you are trying to do business with, telling them they have the patents, and they have pooled their patents, and they have the power of the patents, to pick out any one or a dozen. You could keep a man in litigation for the next century.

1426 And we were sued on hundreds of patents at one time. I've been through this. I know what this means. You would never get through. There is no company on earth that can stand it, not one. We were about to go under and close our doors just from the course of litigation of patent after patent. And we would get up

to the point of proving the patent invalid, and they withdraw it, and they put in another one.

Mr. Dodds knows that, and he sits here and trys to tell your Honor that they have no purpose in his portfolio. And he goes to the people, and that threat is implied in every offer he makes. This is the potential of this patent. "If we really want to give you the business, we have the power to do it; we have 510 patents."

You say they haven't any application, but some court will have to determine that. And the courts are open. And that is what this Pool was doing. The documentary evidence all the way through here shows they were harassing distributors, they were raising these points.

1427 Now, they are quiescent at the moment. They are all sitting back. They are sitting back like vultures on a fense waiting to see what happens in this Court. And if Zenith should lose this law suit, we would be sued from here to breakfast, and he knows it—this man knows it—with a big grin on his face which I think may come off before this thing is over. They are watching this litigation. Brian McConnell knew about the litigation.

1428 And how do the two things go together? You have heard the testimony. I am not going to go into the misuse. We will develop that in detail in our briefs. But it is perfectly clear the coercion that was involved in it. And it is perfectly clear where we were if we acknowledged the invention, that it was valid and so forth, what would we be able to say in Canada? They would be on us tomorrow. The threat is implied. They come to us and say, "You have to have a license. You have to come up here and manufacture," And they know we are not going to go up there and manufacture. They have been using that on us for years and years and years. We said we want to do our legitimate business, which is to make and import and send our sets into the markets of the world, which

the antitrust laws in this country say we have a perfect right to do. And Mr. Dodds and his company isn't just up there absolutely encapsulated from any of our antitrust laws. He has been down in New York setting up
1429 these agreements; he's been operating on it. It is working back and forth across the border, and it is hooked up with this litigation, with the threat in this litigation following right up after Brian McConnell's trip down here to Chicago.

Now, I took Mr. Dodds all over this thing. Nobody can read this record—I say this with all due deference to your Honor—nobody can read this record and come to any other conclusion than Mr. Dodds knew all about this Pool. He has known all about it all along. He hasn't any objections to it. He thinks it is just one grand big idea, to stop trade between this country and Canada, and he is in it; he is profiting by it. He has put his patents in there at their disposal with the knowledge of what they are going to do with them, and he has helped them from time to time in litigation against Motorola; in other litigations. He has gone up there and helped them, to show what circuits they could use and what circuits they couldn't use. We have the documents, we have the letters, and so forth, all the way through.

1430 Now, what is the impact of that on our business? We have never been able to import free of this Pool. We have now some licenses. We are asking this Court to enjoin the use of this license against us so that we can have a chance to obtain a license from Hazeltine under their patents to manufacture our goods and sell them in Canada under their Canadian licenses. We can't get it. There is no way we can get it,—unless through the courts, and we got it from the other companies by virtue of our lawsuit and our litigation when they capitulated, when they saw they had no defense to this thing.

Has your Honor heard any single defense except the patent law; any single defense to the fact that they did meet up there; that they were manufacturers; that they were suppressing competition; that this would necessarily suppress competition; that it was a legal consequence of their acts which they can't say they didn't intend? They knew; they knew how it was done; they saw how it was
1431 going forward; they knew all about the Zenith litigation; they knew all about it. They followed it and they knew the results of it, and they go forward with it right on as if nothing has ever happened.

1432 General Electric can get their patents out of the Pool under an exclusive license; RCA can get them out of the Pool; Westinghouse can get them out of the Pool; the Telephone Company can get them out of the Pool, and authorize and direct the Pool. Brian McConnell told us that they had directed him to issue licenses to import, but nobody else. What conclusion can you draw from that? They have to be in it; they have to be going along with it; they have to be conforming and acquiescing, and deriving profit from it. They went in it because this was a great way to levy tribute on the entire radio and television industry in Canada. And to get that right and that privilege, they put their patents in a Pool which was going to be used to stop commerce, and they knew it. And there isn't the slightest doubt in the whole wide world that they knew every single element of a conspiracy when they went in it, and they have known it ever since, and they have known the effect of it.

All right. This isn't something that caught up with
1433 somebody. They knew about our claim of being excluded from the time of the Zenith litigation. And we have heard the testimony of Mr. Wright and Mr. Kaplan, who are seasoned experienced executives of one of the largest most successful companies of the whole United

States, as to what happened—what the impact was. And they weren't just dreaming up something. They are dealink with a specific problem, and they cannot spend the money, they cannot do the things that are necessary to be done to develop their business the way they do here in the United States, in a free and open market, in the face of this Pool. Because as soon as they accumulate a large surplus of materials up there, warehouse them, get themselves into shape to do the kind of business that they do down here—to use an expression of Mr. Ruestow—zingo, the roof would fall in. We knew it; they knew it; this Commission up there knew it. They knew nobody of the size and caliber and integrity of the Zenith Radio could afford the risks that are involved to really go in there and develop their business until this impediment is done
1434 away with. And we are here in this Court asking that this impediment to the commerce of the world be done away with under our antitrust laws.

The Court: How serious was the threat in regard to the radio business after 1955?

Mr. McConnell: The seriousness of the threat of the radio business is that you cannot sell radios alone. You have got to sell them in conjunction with an entire line. We have never had anybody say we are not going to enforce patents against you in the radio business. The Pool has never said that. There may very well be No Pool patents which they can win in a lawsuit on radio, but they haven't told that to us. They are telling us, "You take a license or else."

We are talking about this as our business and we can't sell anything without a full line of products. We are competing with companies that do have a full line of products, that have television, that have radio, and that have stereophonic instruments. And all of these things are pre-
1435 cluded by the Pool. Even though they say they don't

have any patents in their package license, they have radio patents. They take that under the theory that that is insurance. You are insured against what—what are you insured against? You are insured against litigation that they may bring.

1436 Now, this man asked Mr. Wright whether it would be good business to sue on a patent that was invalid. If you are an honest businessman, it wouldn't be good business. But the way they have operated these pools, the way Canadian Radio Patents Limited has operated it, to exclude competition from the whole world and divide up the world, why, of course, it is good business if you can accomplish it that way. This is an illegal activity. They don't have any of the presumptions of an honest business. They are excluding competition.

If you read these documents which we have got here—and we are going to put them in folders and give them to you—you will see that there isn't the slightest question in the world that the whole point and intent of this whole arrangement and setup and pool up there in Canada is to stop competition, and preserve that little market up there for themselves.

Now, how did—

The Court: You are suggesting that if somebody should be deterred by, perhaps, an empty threat, and if some-

1437 body is deterred by what is obviously an empty threat, why, there should be sanctions applied because of their naivete?

Mr. McConnell: I don't know how empty the threat is, and nobody can say that short of a court proceeding. We say this patent here is invalid. We have had a long hearing on it. We say it isn't valid at all, but we are being sued on it. We were threatened with suits on it. Nobody Knows whether these patents are valid until some court determines it.

The threat of litigation on 5,000 patents—I told your Honor, it wasn't any empty threat. We won a lawsuit down in Delaware on patents. We were sued on them. We won the patent suit, as far as we went with it, until the thing was settled. That didn't deter them from suing us. The Court held it didn't have any application to our set at all.

It wasn't an empty threat. It was a serious lawsuit and it cost us thousands and hundreds of thousands of dollars to defend it.

The Court: The particular patent that they sued on, they were collecting royalties from somebody on it
1438 at that time, weren't they?

Mr. McConnell: They weren't collecting any from us. And they said it applied to us, and it didn't. The Court held that it did not. It wasn't an empty threat, because while they had no merit in their position, it cost us in that proceeding almost a million dollars to defend it. That's coercion; that's the threat. That is a very serious threat to a man in business. And we win the patent case, and he knows we won it.

Mr. Dodds: One patent.

Mr. McConnell: That's the only one that was tried.

Mr. Dodds: Right.

Mr. McConnell: And we won it. And they were waiting in the alley and they were waiting in the corridors with patent after patent after patent. And we would get up to trial on one, and they would pull it out and put another one in. I'm not dreaming this up. This happened. That is the kind of a threat that we are up against. It is not empty at all.

Now, we haven't got a situation where we can go
1439 and bargain with an individual patent holder, or another one, or another one, and have them competing against us to give us a license. Not at all. They are all bound together.

And the cases which I will cite to you in our briefs, when we get to our briefs, are cases that hold that even in that situation you can't join one patent with another. And they cover—these licenses ran on not only patents that the pool had, but patents of applications, patents which they might have, patents which they didn't have but which they would have in the future, possibly, extending patent monopoly away beyond anything contemplated by any patent law, Canada or anywhere else.

1440 Now, what was the effect of that, coming to the damages which were created to our business? Your Honor has heard the testimony of Mr. Wright in the other proceeding, lawyers handling companies of international standing, lawyers who are of the highest standing in this country went over our books and records and our computations and paid us ten million dollars for our damages occasioned by being cut off from those markets. These people are not dealing with somebody that cannot be damaged, that is just trying to do business somewhere in the first instance. They are dealing with a company which has established itself and has shown that it is a competitor equipped to compete and has competed successfully with the best competition that this world offers. They are first in television and they are first, second or third in radio. We never did find out from the witnesses.

And that is the trade that is being intercepted and
1441 interrupted and interfered with. And we are asking that so far as Canada is concerned, we want damages for being excluded and we want an injunction to prevent them from using their patents in this Pool to prevent exports from the United States into Canada.

Now, as justification for this Canadian Pool, throughout their whole history they have told everybody that they can't license for importation. It has been a fraud from the beginning. It never was true from the time that this

company was first organized in 1927 and we have in evidence the opinions of the RCA Counsel who looked into it, went all over it, and came to the conclusion that it was not so, that that was not the law, that they couldn't justify it that way. But they went forward with it anyway for business reasons, because they were in it and they were getting revenue out of it and they kept their patents in it. But they recognized all the time that if anybody seriously challenged it they never in the world could maintain it, and those letters, the opinion of Ira Adams, the chief patent counsel of RCA, is in this evidence, in which he said
1442 as far back as—when was that, '23 or—

Mr. Curtis: '24.

Mr. McConnell: —1924, that you couldn't use a Patent Act to implement a Pool of this kind.

And they tried from time to time to get out and finally did get out, and the real conclusive piece of evidence in this that you don't have to do it that way is the fact that after they were challenged and after they had to pay damages for doing it that way, what did they do? In spite of all of their statements and protestations over the years that they were only enforcing or going and living up to Canadian patent laws, they directed the Pool, they directed it, not authorized them, they directed them to issue their licenses which were in the Pool for import. And we know that by their agent who came to us, Brian McConnell, who was their agent running the Pool and making that representation. There is no contrary evidence. They don't bring Brian McConnell down here to deny it. That
1443 is established in this evidence. There isn't anything to controvert it. That is the situation even after this lawsuit was in this Court.

1444 And Mr. Dodds says, "I am here. I stand here. I know the facts. I know all about it and I am going to stay right in the pool."

And he says that right in this proceeding.

Mr. Dodds: Mr. McConnell, that is the third time that you have repeated that and you know that it isn't so. Why do you keep saying that?

The Court: You will have an opportunity tomorrow to answer this, Mr. Dodds.

Mr. McConnell: I am not going to discuss the minutia of the damage proof so far as Canada is concerned at this time. I think that that can be developed in the briefs.

The Court: I think so.

Mr. McConnell: And I think that what your Honor wants from me on Canada is the conspiracy issue, and that is what I have attempted to do.

The Court: That is right.

Mr. McConnell: Now, we have had this talk all the way through, that all we are dealing with here is foreign laws, that we are not dealing with American laws. This is something way beyond the pale, way over here. These 1445 people have done this in another country and it hasn't anything to do with what can be reached by the laws of the United States. We haven't any problem on the law with that.

The United States Supreme Court just recently in Continental Ore Company against Union Carbide Corporation, 370 U. S. 690 at page 704, the contention there was made that these acts took place in foreign lands and therefore this Court here couldn't reach them at all, couldn't do anything about it.

The Supreme Court first took up the question of how we should look at a conspiracy, and they say:

> "In cases such as this, plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each."

Now, Mr. Dodds and his co-counsel over here would have

your Honor look at one little act that they did, and they get to talking about the minutia of their licensing
1446 agreements, as if they can insulate themselves by something they put in a contract, when they get into something knowing the full details of it and go forward with it. And the Supreme Court says that you can't deal with it that way, just looking at the individual act. You have got to look at the whole thing and see what the effect of it was and how they got into it and where they went with it and what they knew about it and whether they acquiesced in it or not, and the Court says:

> "The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole."

And they get to the foreign question:

> "Respondents say that American Banana Co. v. United Fruit Co., 213 U. S. 347, shields them from liability. This Court there held that an antitrust plaintiff could not collect damages from a defendant who had allegedly influenced a foreign government to seize plaintiff's properties. But in the light of later
1447 cases in this court respondents' reliance upon American Banana is misplaced. A conspiracy to monopolize or restrain the domestic or foreign commerce of the United States is not outside the reach of the Sherman Act just because part of the conduct complained of occurs in foreign countries."

And they cite a long list of cases in support of that contention.

The Court: Perhaps this would be a good time to break.

Mr. McConnell: All right, yes. Thank you.

The Court: We will recess until ten o'clock tomorrow morning.

(Whereupon, an adjournment was taken to 10:00 o'clock, a.m., of the following day, Wednesday, February 26, 1964.)

1448 • • (Caption—59-C-1847) • •

Before the Hon. Richard B. Austin,
Wednesday, February 26, 1964,
10:00 o'clock, a.m.

The trial was resumed pursuant to adjournment.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow.
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1449 The Clerk: Case on trial.

The Court: You may continue.

Mr. McConnell: Thank you, your Honor.

In the course of my argument yesterday I was making the statement that Mr. Dodds has admitted that he knew the fact and he knew all about it and he was going to stay right in the pool, and he challenged me on that statement.

I am reading from Page 136 of the transcript in this case, which was the deposition of Mr. Dodds read into evidence:

"Q. When did you find it out, whether you recall the date or not, did you look into it to find out whether or not you might be liable for being in the pool?

"A. I am not quite sure how to answer it. I have been aware, of course, for a great many years, of this attack upon American companies who directly or indirectly participated in the Canadian Radio Patents Limited. I have tried to keep myself informed both of any
1450 litigation involving that subject matter or any proceedings in this country or abroad, and when I ac-

quited any particular bit of information I just do not recall. That's a long period of time.

"Q. You knew something was going on in the way of an attack by American companies against that pool, didn't you?

"A. Yes.

"Q. You had known that for a long time?

"A. Yes.

"Q. You still stayed in the pool?

"A. Most definitely, and we intend to continue to stay in the pool."

Now, I was discussing with your Honor the intent and purport of this pool up in Canada yesterday, and the evidence here shows that it doesn't faintly resemble a pool just to prevent patent litigation. I said, and the contention of the plaintiff here is, and the evidence supports the contention, and the allegations are that this was a pool, a
1451 combination of manufacturers to prevent competition.

That is what motivated their activity and this patent angle of it was a means of implementing that conspiracy. We have in evidence here Defendant's Exhibit 141, which purports to be the minutes of a monthly meeting of the Quebec Radio and Television Distributors Association, held on Thursday, May 7, 1953, in Montreal, and present in that meeting were a number of individuals named in the document who were representing manufacturers in Canada. They are named, too, Northern Electric Company, Canadian General Electric Company, in the pool, members of the Pool, Electrical Products, National Carbon, Spartan of Canada, RCA Victor Company, Limited, whose patents were in the pool, Canadian Marconi Company, Limited.
1452 In the course of that meeting, the minutes state, on the subject of importation of sets into Canada—Mr. Brownlee, who was running the pool at that time, was up there. Under the subject of importation:

"The chairman reported on action taken by Canadian Radio Patents Limited to halt the importation of non-licensed radio and television sets and complimented Mr. Brownlee for the excellent work which he was doing."

Mr. Brownlee being the man who was running the pool.

"It was decided that members should clear all infractions through the secretary who would report immediately to Mr. Brownlee. The secretary was requested to write CRPL requesting information governing importation regulations as well as the details of what was necessary to qualify for a manufacturing license."

Now, that shows that the pool was working with manufacturers, distributors, retailers, to control that 1453 market up there against importation.

Then we have a letter on the letterhead of the Canadian General Electric Company, also a member of this pool, written to RCA-Victor Limited, also a member of the pool through having its patents in the pool—and, by the way, RCA Victor wasn't a stockholder in this pool. It had its patents in the pool. And your Honor will recall that the main thrust and drive of the Government's suit was against RCA as being a co-conspirator in this pool. An injunction was entered against them in the consent decree, and they were required to make their patents free of the restrictions of this pool as a result of that litigation.

So here we have one co-conspirator writing to another, and if there ever was any doubt about what was intended by this pool, this letter should end it. This was written quite a while ago, but it was after Hazeltine had its patents in the pool. It was written November 27, 1935, to Mr. Grimley, president of RCA Victor, on the letterhead of

Canadian General Electric, and written by Mr. Mac-
1454 Farland, their general solicitor, who was the man that was negotiating with Hazeltine, who had the negotiations with Hazeltine when Hazeltine went into the pool, which negotiations, the evidence shows, were conducted down in New York City. He says:

"Dear Mr. Grimley:

"Recently we have had applications from parties in Canada requesting the terms upon which we would grant them a license under our patents to import into Canada and sell power amplifier and power supply equipment mainly, I presume for installation in small rinks, fairgrounds, et cetera. In the past two or three years, we issued two or three licenses with a time cancellation clause under Canadian GE patents, but advised the parties that they took their own risk under Northern Electric patents. And some of these companies such as Belden International, Screen and Sound Service, and Wholesale Radio have possibly been selling some of this equipment. However, in view of our
1455 recent arrangements with your company, we would prefer to see business of this nature go through your company for distribution, either by ourselves on your distributing organization, insofar as such is permitted under our agreements with the other companies, and if the same does not constitute public address systems in which field Northern have exclusive rights.

"Under these circumstances, I would appreciate if you could tell us whether under your new setup with Northern covering the sound equipment field, you are enabled to sell public address systems and thus desire that no further amplifier licenses be granted.

"Confidentially, the recent inquiries have come from Radio Receptor and the Webster people in the United

States who, some time ago, also were anxious to come into the Canadian field but were dissuaded by us from doing so. On the other hand, if our respective com-
1456 panies are unable to benefit from a manufacturing standpoint, there may be no reason why these people should not be licensed."

1457 In other words, they weren't worried about whether or not there would be a misuse of their patent. If they weren't manufacturing it, if there wasn't any competition with them, why, sure, why not give them a license. It shows the whole intent of this thing. And here is writing from one co-conspirator to another that throws a beautiful light upon their intent, and their motives, and purport of the whole thing.

Now, we got from the files of this company a letter which was sent to Radio Corporation of America down in New York who, incidentally, are in the same position with reference to this Pool as Hazeltine. They weren't a stockholder. They had their patents in the Pool under the same arrangement, under a license with the right in Canadian Radio Patents Limited to grant sub-licenses.

Now, you have heard this talk about selling their patents. That wouldn't fool a nine year old boy. They had those licenses up there, and they were deriving revenue on
1458 quarterly payments all during the course of this. I'm not going to read the documents here that show their receipts, but they are in evidence showing they got receipts from the Pool. It didn't remotely resemble a sale of patents. It was a license.

They are trying to tell your Honor that they have sold and parted with all interest in their patents, which it just absolutely isn't so. And in our interrogatories, we asked who owned the counterparts of the American patents, and the answer that is given here in their formal answer to interrogatories is the Hazeltine Corporation—not the Pool,

CRPL. So that is an obvious device to make your Honor think that they are not in it, not deriving profit from it, not participating in it, not going forward with it all the time.

Now, here is a person—a company in the same exact identical position as Hazeltine, and I assume they got this too—they must have. It was sent out to people in the
1459 same situation as they are; namely, the people that had patents in this Pool. We didn't get it out of their files, but it came out of the files of a co-conspirator. And this is a letter under date of November 6, 1946, at a time when they were in the Pool, when their patents were in the Pool, in which Mr. Maripole writes to Mr. Shackleford, who is the head of their patent department down in New York, and he says:

> "Enclosed is a copy of a memo which we received from Mr. Brownlee"—

and Mr. Brownlee is running the Pool—

> "of Canadian Radio Patents Limited together with a questionnaire. You will see that they asked us that we return one copy to them not later than Monday, November 18."

Then he asks him to fill this out. Now, in this questionnaire—and this is going to the patent holders. The way they have told it over the years, you would think that they had no option at all about what they could do. They
1460 just couldn't license anybody to import anything into Canada because of this absolute prohibition under the Canadian patent laws. And you heard it stated here by Mr. Dodds as if it was absolutely a prohibition which prevented anybody from bringing anything into Canada. So they sent out a questionnaire to their people and asked whether they are in favor of having licenses which manufacture in Canada along the lines of the buff-backed agreement, or favor importation on written approval of CRPL, or other.

Now, I don't know how they answered this questionnaire, but I assume the patent holders answered it and went of record in some way. We haven't been able to get the documents out of anybody's files as to what the answers were, but they didn't change their licensing practices after '46, after the questionnaire went out. And I assume that everybody knew about it, and went along with it, and authorized them to proceed in that way.

1461 Now, we have another document in this—and I am only skimming the surface of these documents. The idea that this is just a little innocuous pool up there to prevent litigation is really a laugh, because they were promoting any litigation they could against anybody that imported anything into that company up there, and the documents show it beyond peradventure.

Now, here is some advertising material which came out of the files of Canadian Radio Patents Limited. And it is sponsoring a nationwide advertising and publicity campaign "to sell Canadian-made radios for you."

Now, if it was just concerned with patents, what were they doing out in the retail trade carrying messages and advertising in newspapers all over the country, and circulating this all among the trade and asking for their cooperation? And they are furnishing the material which is to be published. And they say, "There is 4,343,084 advertising messages to help put a stop to importation of cheap, substandard imported radios. In every province in Canada, from Nova Scotia to British Columbia, large-size

1462 advertisements sponsored and paid for by Canadian Radio Patents Limited are helping to sell Canadian-made radios for you."

Is that just protecting and stopping litigation between patent holders? What are they trying to do? They are trying to protect the market of these people from competition, from companies like Zenith Radio.

"Daily newspapers, weekly newspapers in practically every city and town that is in close proximity to the United States border are covering these ads now. Their combined power gives a staggering total of 4,343,084 advertising messages to tell the story of Radio Patents Limited, the story of why consumers should not, may not import cheap, substandard models. You have probably seen these ads in your local papers. Tie up with them by putting up in your window the enclosed warning streamer, by telling your customers and friends about the dangers of the situation."

Then they go on and they set out here samples of the advertising which they are going to supply the trade
1463 with. Obviously, an attempt to stop commerce with a company here in the United States. And that is exactly what our antitrust laws are designed to prevent.

Now, this is right down to date. Mr. Wright told you he had received a copy of this notice, which is Defendant's Exhibit No. 138, in the magazine Trade Builder for August, 1958. There was the advertisement, and then there was the notice. Well, they say they don't threaten any litigation. They state here that they are operating under the sections of the Canadian Patent Act. It names the companies which they have licensed to manufacture in Canada. And here is what they say:

> "Canadian Radio Patents Limited desires to inform importers, vendors, purchasers, or users of radio and television receivers and other electronic devices and equipment incorporating patent inventions owned or administered to Canadian Radio Patents Limited not manufactured and sold under license from Canadian Radio Patents Limited, that they will be held liable
> 1464 for patent infringement."

How are they going to hold them liable for patent infringement unless they sue them? This is a notice that goes out to the trade. Our distributor picks it up and sends

it in to Mr. Wright, and they had the conversation about it in which your Honor has heard the testimony.

1465 It is going on right now. We haven't been sued up there, but we have been sued here and we have been sued on the Hazeltine patent by a Pool member.

And it is our contention, and the record bears me out, that this is implementing that same conspiracy, their suing us here in an attempt to force patents which are held in that Pool, and which Mr. Dodds admitted on the stand here yesterday, that the counterparts of them were in the Pool and that the licenses didn't give us any protection against a suit up there. And we can't get a license to import.

Now, as late as May 17, 1962, we have here in evidence a communication from the Pool, and bear in mind that under the law, once you are in a conspiracy the law is, there isn't any question about this law, if you are in a conspiracy you are liable for what anybody does in the course of that conspiracy. You get in it and it isn't just what you do with your one little patent, or this patent
1466 or that patent which you have in your portfolio, it is what that conspiracy does with all of the patents which they have under their command and disposal and utilization in working out the object of that Pool. And there isn't any question about that law. We have cited the law in our briefs.

Now, here we have a communication from our distributor, Mr. MacCuspie up in Nova Scotia, Ideal Electric Supply Company, and you will find in the evidence here that Mr. MacCuspie has been the target and object of attack from the very time he began up there. He has been in constant trouble with the Pool. And he sends us this communication which was sent to Electrical Distributors Limited, under date of May 17, 1962. This isn't any dark, dim, past history, this is something going on currently:

"Dear sir:

"We notice from an item appearing in the press that you have been appointed a regional distributor to market in Canada home entertainment products manufactured in the United States and bearing the
1467 trade name Motorola."

Another American company.

"Canadian Radio Patents Limited is an agency empowered to license the Canadian electronic patents of such firms of Philips Electronics Industries Limited, Canadian Marconi Company, Northern Electric Company Limited, Canadian Westinghouse Company Limited, Canadian General Electric Company Limited and Hazeltine Corporation. In addition, we own Parker Patent No. 457,328 entitled 'Television Receivers'"

They are asserting the 5,000 patent in that Pool, not just television patents—radio patents, everything that applies to electronic devices of any kind, and radio is incorporated into all these television sets. All the television sets have a radio attached to them.

"Addison Industries Limited and Seabreeze Manufacturing Limited which made Motorola products in Canada were each licensed by Canadian Radio Patents Limited."

1468 Now, your Honor heard the testimony here by Mr. Kaplan that Motorola had quit manufacturing up there. They found that it wasn't profitable and they closed up and they quit.

"Although we have not, of course, had an opportunity to examine the circuits of any home entertainment products which you intend to market in Canada under your arrangement with Motorola, we would strongly suspect that television receivers would incorporate the

inventions of at least the above-mentioned Parker patent and also Armstrong patent No. 44,177. FM radio receivers would almost certainly use the latter patent also. A close analysis of the circuits would probably disclose other inventions covered by patents which we are empowered to license."

Then they refer to the sections of the Canadian Patent Act, which we have had a lot of testimony about here in the course of this proceeding, and they say—it is the
1469 pool, it is written by Mr. McConnell. He is the president of the pool:

"From the foregoing you will see that licensing of imported products which hinder working of patent inventions in Canada on a commercial scale constitutes abuse of the exclusive rights granted under the patent or patents involved. Furthermore, such abuse can exist should the patentee or persons claiming under him fail to take action for infringement against an importer into Canada of a patent invention. At this point it seems fairly evident that importation of Motorola products incorporating our inventions would hinder the Canadian manufacture on a commercial scale of similar products. Accordingly, in order to comply with the intent of the Canadian Patent Act, we would not be prepared to license such imported products with the exception of patents of Canadian
1470 General Electric Company, Limited, and Canadian Westinghouse Company Limited."

Now, here are two of these conspirators who formed the pool up there, who couldn't see any way at all to grant a license to import anything because of these Canadian patent acts, and after they got in trouble with the United States Government and after our Zenith Litigation they found that it was very easy to do and obviously have instructed Mr. McConnell to offer a license to import.

But what good does that do you if you have got these other patents which are not so licensed?

"These we have been instructed to license—"

These are the Canadian Electric and the Canadian Westinghouse.

"These we have been instructed to license irrespective of the country or origin of the patented products."

Which shows the whole spurious nature of this patent law defense.

Now, they go on:

1471 "Accordingly, should importation of Motorola products take place, and should these be found to incorporate inventions covered by patents which we are empowered to license other than those of Canadian Westinghouse or GE,—"

They don't make any exceptions for Mr. Dodds' patents or his Hazeltine patents.

"—we will be forced to take whatever action they may deem necessary in order to protect our patents.

"I might point out that we initiated two cases in the Exchequer Court last year, one against a Canadian manufacturer, which was settled before coming to trial, and the second against an importer of German radio receivers. Judgment on the latter case was handed down in May 2nd of this year in favor of Canadian Radio Patents Limited.

"In closing, I wish to inform you that we should be most happy to issue a license to you to make or have made in Canada any equipment covered within the ambit of our patents."

1472 But no license to import.

In other words, Motorola had been up there, had tried to manufacture, found it wasn't productive of profit,

wanted to produce and sell their sets free of the restrictions of the import restrictions of this pool and couldn't do it.

Now, we have heard a lot of talk here about we are dealing with patent rights, and there is something sacrosanct about patent rights. They can't be used in the pool, they have been sold, and all of this and that and the other things, and there is a lot of law cited in our briefs on that subject, and I think the leading case on it is United States v. National Lead Company, which was an opinion by Judge Rifkin, 63 Fed. Supp. 513, 523, which was affirmed in the Supreme Court of the United States in 332 U. S. 319. He says:

> "No citation of authority is any longer necessary to support the proposition that a combination of competitors which by agreement divides the world into exclusive trade dealers and suppresses competition
1473 among the members of the combination offends the Sherman Act."

And then in the National Lead case they said:

> "To have access to the patents of the combination, the stranger must not only have the consent of the member of the combination in whose territory he would operate, but he must adhere to the principles of the combination. The cornerstone of the system was a private regulation of international trade. The suppression of competition was the cement which held the superstructure in place. Whether the form of association they created be called a cartel, an international cartel, a patent pool or a technical and commercial cooperation is of little significance. It is a combination and conspiracy in restraint of trade and the restraint is unreasonable and as such it should be outlawed
1474 by Section 1 of the Sherman Act."

And then there is Judge Ryan's opinion in United States v. Imperial Chemical Industries, which also takes up patent rights and says that they cannot be utilized any more than any other device can. And any perfectly legal act that is utilized in the course of a conspiracy takes its tone and its flavor and its import and its content and the illegality of the illegal conspiracy, infects it from start to finish, beginning to end.

And this Court should bear in mind, also that patents rights are something granted, they are a right granted. They are not granted as a means of breaking other laws of a country that grants them. It is a conditional grant, and that is the whole basis of the misuse theory and the misuse defense in these cases, that the sovereign who grants the right will not permit the use of that right in derogation of other laws which have to do for the public interest to which the sovereign is dedicated and entitled to protect.

1475 Now, we have cited the New Wrinkle case in our brief which holds—we have heard from Mr. Dodds, why, he isn't manufacturing anything, all he has is some patents. An the Supreme Court in the New Wrinkle case said that it didn't make one bit of difference whether he manufactured or not, if he got in a conspiracy with his patents he was in it and responsible for everything that happened in the coarse of it, and it didn't make one iota of difference whether his particular interest in manufacture was protected or not, if he was joining and if he was aiding and abetting others who were conspiring to do that, and joining the plan with his eyes wide open, his patents are just as much bound as if he was a manufacturer. And there can't be any question about that law, and we have cited it all the way through our briefs.

Now, the impact on this thing in Canada is perfectly obvious, and if there was any doubt about it, it was com-

pletely put to rest by the exhibit which my opponent introduced in evidence here, a report from this Royal Commission where they had a man trying to give them a
1476 whitewash. The witness on the stnad, his partner, was up there trying to give him a whitewash, get something they could use in negotiations and so forth, with other people, and to implement their conspiracy, and they didn't succeed. Because in that report, right there in language that nobody can misunderstand, it says that they have 5,000 patents and in the face of those patents, as a practical matter, no one can import into Canada; that they enforce them, they implement them with infringement suits. And it is all in the report and it is all written out there, and it comes right from the mouth of CRPL in their own proceeding there in which they seek a whitewash from this Government agency.

That is the situation we face in Canada, and we faced it for a long, long time, and we thought that we got rid of it with the Zenith litigation and with a consent decree, but we haven't gotten rid of it and it is still on our backs, and it is being worked forward and backward up and down, and it is only that pool, its patents are used against us here, the patents here are used there. I am now
1477 passing on to England, where I will show that those patents likewise are involved, not only there but in the local situation here.

Now, in England we have a pool, and it is perfectly ridiculous for my opponent—I am going to read a letter here and a little later on—to say that he doesn't know what a pool is. He writes letters about the pool. He tells you what pools that he is in. He has been familiar with pools for a long, long time.

1478 They go over to England and they want to get in the Pool—and this case is not one that you have to infer from a lot of circumstantial evidence, this case is

as strongly documented as any antitrust that is ever going to come into Court. This thing is absolutely documented from start to finish and from beginning to end. Why did they want to go over there and get in those Pools? Why did they want to go over there and make an agreement with English electric companies? We don't have to speculate about it.

Here is an agreement, executed on the 10th day of November, 1958, between the Hazeltine Corporation and the General Electric Company Limited, and Mr. Dodds' signature appears on it and Mr. Binns' and here is the recital in the agreement—this is Defendant's Exhibit No. 46:

"Whereas by virtue of two agreements between the Corporation—"

The Corporation is Hazeltine and the Company is General Electric.

"—dated respectively the 6th day of April, One thousand nine hundred and thirty-nine and the twen-
1479 ty-fourth day of July, One thousand nine hundred and forty-five the Company hold from the Corporation until the thirty-first day of December, One thousand nine hundred and forty-nine a sole and exclusive license (but not including the right to grant sub-licenses) under our present and future patents belonging to the Corporation relating to Receivers for broadcast radio and to television transmission and reception.

"And Whereas by a further Agreement between the Corporation and the Company dated the sixth day of April, One thousand nine hundred and thirty-nine the Corporation granted to the Company rights inter-alia to utilize the said Patents for the purpose of securing entry as a Licensor into any British Wireless Pool which might be formed or otherwise to deal

with the said Patents by way of granting sub-licenses thereunder.

"And Whereas a British Wireless Pool was duly formed and the said rights were duly exercised by
1480 the Company and said further Agreement was by agreements between the Corporation and the Company dated the twenty-fourth day of July, One thousand nine hundred and forty-five—"

Extended for additional periods of three years and one year respectively. Then they go ahead and grant the further license to get them in the Pool.

1481 Now, we have here in evidence—these license agreements extend from time to time between Hazeltine and GEC with the expressed purpose of getting Hazeltine patents into the Pool.

Now, what do they get into, and did they know what they got into? I have here an Exhibit which is produced from their files, Exhibit F, which is here as Defendant's Exhibit 52. Now, if I ever saw in my life complete conspiratorial agreements in evidence to stop commerce between two nations, this is it. You just can't improve on it from a conspiracy standpoint.

Who it in it now? The British Thomson-Houston Company. That used to be, and probably was at this time, I think it was at this time, a subsidiary of American General Electric. Philips Electrical Industries; that is the Holland Company, which is the biggest electrical company in the world; General Electric Company, which is a terrific company. We have got in evidence here background information on these companies. They are giants. This whole
1482 thing is an octopus with tentacles all over the world and just completely ties up the whole electrical business everywhere.

I haven't had a chance to develop it in its world-wide aspects of that kind. I have left that part out because the

individual Pools are so clear and so apparent and so well documented that we don't have to add frosting to the cake.

Then there is Marconi's Wireless Telegraph Company, the same company they had up there in Canada. These companies are the same, Philips, Marconi and EMI. And EMI, Electrical and Musical Industries Limited and its subsidiaries, the Gramophone company, the Columbna Graphophone Company and the Marconiphone Company Limited and all subsidiaries of any of them. And here they are, and they recite in here where the patents come from. The Philips patents come from the Hartford National Bank and Trust Company of Hartford, Connecticut. A little side light on that; when the Germans came into Holland the Philips Company sent all their patents
1483 over here to the United States, put all their applications in trust in Hartford so they couldn't be picked up and utilized by the Germans.

But this just isn't over there. Here the patents are here and they are being put back into this Pool. And here we get down to the General Electric Company and its subsidiaries and the Hazeltine Corporation. These are the Pool members—and the Hazeltine Corporation.

And it talks about:

> "—all present and future patents of the British Isles originating with the following companies,"

naming the General Electric Company and the Hazeltine Corporation. They are in the Pool.

Now, what were the restrictions? And here is an agreement restricting trade, no question about it:

> "Unless otherwise agreed no licenses are hereby agreed to be granted to import Radio Apparatus into the United Kingdom or to deal in in the United
1484 Kingdom imported Radio Apparatus or Radio Apparatus containing imported component parts to an

extent exceeding in value 10% of the retail list price of such Radio Apparatus except in each case samples and experimental models for the use of the parties hereto."

1485 Here are manufacturers in England agreeing among themselves and with Hazeltine in it, agreeing among themselves not to license anybody from the United States or any other country to import radio receivers, and the later license agreements include television and everything that there is in this electronics line which we are talking about in this lawsuit, an agreement to do it. We aren't talking about what Hazeltine could do with its patents as an individual. We haven't that problem before us at all. The question is, can they, by a conspiracy of our competitors in world markets, and I say "our" competitors, I mean Zenith's competitors in world markets, can they shoulder to shoulder tie up and control and completely block our commerce in those markets? And if they do so, don't they come within the caveat of our American anti-trust laws? And the courts say that they do.

Then, here is the real one:

"All matters appertaining to the granting and
1486 administration of licenses in pursuance of this clause eleven and to procuring other parties to join with the parties hereto in such licensing shall be decided by their Committee by a majority in voting value of the votes of those entitled to be represented on the Committee and the parties hereto undertake to comply with all such majority decisions."

Here are these manufacturers, competitors of ours, agreeing to be bound by the majority decision. And who is the majority? No one but EMI, the one that Mr. Dodds went over and talked to who had the controlling vote in this thing and have had the controlling vote from the very

beginning. And the evidence is absolutely clear on it. He admitted it—I will get to their minutes of their meetings where they assert they have a majority of votes in that Pool.

And what is he talking to them about? He goes over there and he talks to EMI, not his agents, as he calls them,

English Electric, he sits down with a majority interest
1487 in the Pool, the interest which can determine all the conditions of the Pool pursuant to this agreement, and he negotiates his arrangements on points as to how much he is going to receive. And he is trying to tell your Honor here yesterday that they are just talking about the weather or something over there. He was in there trying to get more points for Hazeltine as against EMI and the other members of the Pool, and there isn't the slightest doubt in the world about what they were talking about. They were talking about their share of the take—how much take home money he was going to get for Hazeltine out of the patents joined with General Electric, a member of the Pool, a stockholder in the Pool, if you will, a signatory to the agreement, the original underlying agreements, and that is what he was talking about. And I am sure that he isn't going to fool your Honor into thinking that he was just over there enjoying the vacation time of England. He was

there on business and he was there on illegal business
1488 and he was talking to the chief conspirator in that Pool, which was EMI. They have run it from time immemorial. They had the RCA patents. They had the licensing of the RCA patents, and Mr. Dodds didn't know that. It is in the Pool agreements coming out of his file. It recites it, that EMI has all of the pre-1945 patents. He just couldn't remember about that at all when he was on the witness stand, and it is right in his own documents. They had the right to license those patents, all pre-1945 patents and all other patents by separate license agree-

ments which he got through EMI. And he told you that, how anybody in that Pool could get the license for nothing. Because RCA got gun shy, and they figured they were in hot water over in that Pool, and they had the Attorney General's Office breathing hot air on the back of their necks and they wanted to get away from that Pool as fast as they could, and they did everything that they could to get out of it and they didn't get out of it fast enough.

1489 Mr. Dodds and his company doesn't want to get out of it. They want to stay in it and they want to share in the take and the proceeds and the fruits of this conspiracy.

We have their output license from the very beginning of it. He told us here once that he didn't know anything about the A.5 pool. Well, then, lo and behold, it turns out that he makes an outline of the A.5 pool in his own handwriting He knew all about it, and in his notes he shows that there is no licensing of imports. He has that right in his—in these licenses there are hundreds of patents here that are referred to and the joinder of patents. And I want to turn to their restriction in their output license, if I can find it here. Four, and this is in every one of their licenses, right down to date—we have got them all there, and they come out of their files and he said somewhere that there wasn't anything after 1946 or something, and I will get to that:

"4. The licensee agrees with the Grantor as follows:

1490 "(a) Not without the previous written consent of the Grantor—"

That is the pool members—it is the signatories, rather, grantors to the licenses.

"Not without the previous written consent of the Grantor to sell any broadcast receiver or radiogramophone which has not been manufactured in the territory for which this license is granted."

This is way beyond any patent rights. They are agreeing not to handle it. These are the people who handle these products in England. They are agreeing not to handle them. It isn't just the license limits to it. This is an agreement when they join with this company:

"No broadcast receiver or radiogramophone shall be deemed to have been so manufactured within the meaning of this license which incorporates imported components and accessories sold therewith, such as, for example, cabinets and valves and cathode ray tubes
1491 to an extent per broadcast receiver and/or radiogramophone greater in value than 10 per cent of the retail selling price thereof."

Now, that restriction was pursuant to the pool agreement not to license any imports, obviously issued in pursuance of that, and we have that license restriction all the way through, all the way down. We get down to the license under the A.8 pool, which is the one in being now, defendant's Exhibit No. 70, here in evidence, and in the last one the restriction is limited to a license to manufacture and sell in Great Britain. No other license is granted in the last—same restriction all the way down to date. There never was a time in which they could license, and I am going to get some documents which illuminate that.

Now, I want to go back to Mr. Dodds and his discussions with reference to this pool. These are notes of discussions. This is something that occurred contemporaneously. This isn't something that is qualified by a witness who jumps in and off of the witness stand and puts on one hat as counsel and then takes that off and jumps onto the witness stand and testifies a little. I have never seen a case
where the only defense came from the mouth of the
1492 lawyer who was trying the case, never in my life. I have been practicing law for 40 years and I have never seen it before. It is absolutely unique. And it is

quite significant here, too, because in the Interstate Circuit case the Supreme Court commented on the fact that in the face of this tremendous documentary evidence case of conspiracy no responsible official of the company got on and denied the conspiracy, and you haven't heard Mr. Westermann get on this witness stand and deny this conspiracy. He was trying to give some explanations here about his misuse, but you never heard him get on there and deny they were in this conspiracy. This case is admitted, from top to bottom.

Here is Mr. Dodds, over there in England. There is a lot of this, but I am going to just get down to the main points that I am interested in and what he was doing over there. Now, here he was in a discussion not with General Electric but with EMI. On the 18th of November, 1955, we find Mr. L. B. Dodds along with Mr. Heather, a member of the pool, or his company is, Mr. Nalder, Mr. Cornock, and then Mr. E. P. Dale-Harris, and Mr. S. J. Preston 1493 of EMI. I know those gentlemen. I had them on the witness stand in the other case. They were very knowledgeable about everything that happened over there.

Mr. Heather opened the discussion by saying—I am reading from Page 10 of Defendant's Exhibit 76-B, entitled "Discussions with EMI."

"First Meeting. Magnet House: 18th of November, 1952.

"Present:

Mr. T. W. Heather,
Mr. L. B. Dodds,
Mr. K. H. Nalder,
Mr. A. F. Cornock,
Mr. Dale-Harris, and
Mr. Preston.

"Mr. Heather opened the discussion by saying that Hazeltine and the GEC wished to act together—"

Buddies, right together.

"—and approached the question of co-operation with EMI in the most friendly spirit. They understood that the proposed scheme for the next pool was on the same general lines as for the past pool
1494 and the main point for consideration was, therefore, what was a fair basis for the assessment of holdings."

1495 The holdings they are talking about are the share of the Pool, the assessment of the value of the patents which are going in the Pool. That's what EMI, that's what General Electric, that's what Hazeltine were discussing.

"Mr. Preston said that TV design was now stabilized, and as it had in the past been necessary to bring actions against obdurate infringers, patents in force and available for action against infringers had been weighted heavily."

They weigh their patents on the basis of how much trouble they can cause, how many lawsuits they can bring, how important the lawsuits are.

"Mr. Heather then asked why the particular scaling now proposed had been adopted. It weighed very

heavily against potentially useful patents not actually in use at the moment, and he would like to know whether other probable members of the new Pool had
1496 accepted it. Mr. Dale-Harris said that he thought it irrelevant whether others had accepted this scale. Mr. Preston said that the scale was somewhat on a 'cut-and-try' basis, adopted after considering the results of a range of possible scales. Mr. Heather repeated that it put a very high weight on patents actually in use: The GEC and Hazeltine had been concerned by the facts that, (a) patents expire, (b) new ideas become important, and (c) licensees take a license partly as an insurance policy. It was not clear that the scale took care of these factors properly."

In other words, Mr. Heather and Mr. Dodds were taking the position they weren't given enough weight, due to the fact that they had a lot of patents somebody could get sued on.

"Mr. Dodds said that, in the U. S. A., a factor which markedly influenced licensees was not so much the
1497 existing patents as the potentialities of the licensor. He referred to color TV, saying that it would only be a question of time before it came in, and it was expected in about two years in the U. S. A.

"Hazeltine had worked out the compatible system, and believed that would have a dominant position when color was adopted. A possible way of dealing with this, would be to revalue holdings when color was adopted, but he was not really in favor of revaluation during the currency of a Pool. Mr. Preston said that he agreed with the two last comments, and added that, if revaluation were carried out, it would have to affect all licensors and EMI themselves considered they would still have a strong position—to which Mr. Heather replied that EMI had made a

change of scale now and might propose a further change of scale when color came in. Mr. Dodds fur-
1498 ther pointed out that an adjustment would not affect all parties equally, because not all had a long term research program on color as Hazeltine had had. Evaluation at one point per patent not in use did not do justice to the future importance of color, and Hazeltine's evaluation would increase more heavily than that of RCA as color developed."

Just an innocent bystander this man.

1499 "Mr. Dale Harris said that EMI would prefer to discuss matters of this kind with companies individually and not to try to discuss them with two parties simultaneously. To this Mr. Heather replied that Hazeltine and the GEC were partners in the negotiations.

They are partners getting into this Pool. And he said it there, and Mr. Dodds didn't contradict him because they were partners. They are pooling their patents and they are sharing them fifty-fifty. What is a partnership?

"Mr. Preston said that he thought color was unlikely during the 'A.7' Pool. He also pointed out that EMI had had to give an undertaking to the BBC that their patents would be available to manufacturers".

Then they discussed the patents. Then Mr. Heather said —and they are talking about the points.

1500 "Mr. Heather thereupon asked how many points EMI expected members other than they would hold in the Pool, and on being told that it was expected that the non-EMI points would approximately equal the EMI points (so that the GEC-Hazeltine holdings would probably be about 6% of the Pool, on the existing evaluation) Mr. Heather said that so low a holding would call for very serious consideration. Mr. Dodds

said he was doubtful whether Hazeltine could consider that so small a holding was worth bothering about: As a newcomer to these Pool negotiations, he felt that the secrecy of the negotiations made cooperation difficult, though he realized the difficulty of having a discussion with fifteen parties round a table simultaneously. Mr. Dale-Harris said that experience had shown that round-table discussions with many parties was im-
1501 practicable—instancing the experience of the Marine Radar Pool."

Then they talk about whether the arrangements were rigid or not, and they come to the statement that they had not yet formulated a figure as to how many were in it, but they thought there would be seven or eight.

"Mr. Dodds said that GEC/Hazeltine had jointly had about sixteen per cent of the previous pool, and if color came in, the Hazeltine pointing should be very much greater; but violent fluctuations of participation were unsatisfactory to Hazeltine, since they depended on research and licensing and must be able to plan ahead. A licensor-group should therefore take a longer view. Hazeltine demands in Great Britain had always been very modest, whereas they had been about 30% in the U. S. A."

Then they had discussions further about the amounts, and they finally reach a figure. And that is over
1502 on page 16:

"Mr. Heather said that he did not feel it was necessary to argue specially about the relative positions of the GEC and EMI; but if it was desired that Hazeltine should be members, he felt it was necessary to come to meet them."

Should be members—and apparently they wanted them members, because they made an agreement.

"Mr. Dale-Harris then said that he had heard from Mr. Schoenberg that, if the offer could be accepted at once, EMI would offer Hazeltine/GEC a holding in the ratio EMI:Hazeltine/GEC::100:17."

"After a short withdrawal for consideration, Mr. Heather and Mr. Dodds told EMI that each would recommend his Company to accept this proposal."

Now, then, on page 17, it is stated:

"The Pool points mentioned during the conversation were as follows:

1503 "EMI, 100;

"MWT, 13½;

"Philips, 25;

"Hazeltine/GEC, 17;

"Total, 155½."

And they entered into the agreement. Mr. Dodds came back to New York, or wrote to New York, or somehow from New York got the authorization to make the agreement and made it.

1504 Now, does your Honor think he can capsulate his conduct insulated by any such conduct as that when he sits down with a mapority member of a pool and agrees what his proportion shall be of the Hazeltine patents as related to the EMI patents? And EMI had been running that pool from donkey's age, and is still running it.

Then we have a letter here that came in after this meeting, Defendant's Exhibit 38-A, from Mr. Dodds to the General Electric Company, from Mr. Nalder. And in that letter he says:

"Since you left England, I have had one or two conversations with Mr. Dale-Harris"—

Now, Mr. Dale Harris is with EMI, as I just pointed out—

"on the telephone, and I received late last Friday an agreement for our signature whereby GEC becomes a

Joining Party to the A.7 pool. In this agreement GEC represents that it can put into the Pool not only GEC's own patents but also those of Hazeltine and
1505 are allowed 12 points as against EMI's 100, but contemporaneously EMI will give us a covering letter agreeing to pay us out of their own share of the Pool, an amount equal to the additional amount to which GEC would be entitled by way of share in the Licensing Revenue Pool had the number of points alloted to GEC been 17 instead of 12. Mr. Heather informed Mr. Dale-Harris that if towards the other pool members EMI felt they could only justify allotting to GEC (and Hazeltine) 12 points, he would not object to this amount appearing in the formal agreement provided, of course, that EMI made up the total number to 17."

That is the way that was concluded. Now, Mr. Dodds wasn't over there for any other purpose than to negotiate a way to find his patents into the pool on a fixed percentage of the pool take. No one can read this evidence—with all due deference with respect to the Court—no one can
1506 read this evidence and come to any other conclusion.

And that's all we have to find under the applicable authorities—to find Hazeltine in this pool and charged with everything that this pool does.

Now, as an adjunct of this arrangement which they made with the pool, Hazeltine got the right to license General Electric Company's American patents. And there is a letter on that. And by the way, we have shown by our evidence here that Hazeltine's—that the GEC American patents taken out by Hazeltine were put in this package license which Mr. Dodds and Ruestow were around trying to sell to Zenith.

And here is a very significant statement that Mr. Dodds wrote, on Page 2 of the letter which is in evidence here as

Defendant's Exhibit 38-B, under the heading "USA License Agreement":

"We are entirely agreeable to the reassignment of the patents and patent applications which we acquire under this agreement upon the termination of the
1507 agreement subject, however, to one possible exception. As you may know, it is the practice of Hazeltine to grant a standard five-year license under all of its present and future patent rights. These five-year licenses do not run concurrently but are staggered so that should the agreement between our companies be terminated for any reason, as of such date of termination we would have a number of licenses in existence in this country having periods of from one to five years to run. It might be quite embarrassing to cut off such licensees' rights in inventions derived from your company in the middle of their license period. Therefore, we should like to offer for your consideration the addition at the end of Clause 2 of this agrement of the following:

"'. . . excepting non-exclusive rights which the corporation may have granted in conjunction with license rights under its own invention rights which may be outstanding upon the aforesaid termination.'"

1508 Then he goes on:

"You understand that our License Agrements are very similar Pool license in that they are blanket licenses under all of our patent rights with no portion of the royalties specifically allocable to any patent or patents. Therefore, the patent rights which Hazeltine might acquire from your company under this Agreement would not represent a source of additional revenue to it."

Now, we have here in evidence Mr. Dodds' own analysis of these pools. I'm not going to refer to them here in

this oral argument, because they are self-evident. He puts them in—he argues, A, not to sell imported receivers, and he has got that all through his analysis, and he makes an analysis of every pool agreement from the beginning of the thing over there, from the A.5 pool down to the A.8 pool.

Then on the question of what Mr. Dodds knew about pools, under his letter of July 2nd, 1948, to Mr. Hultman of the Swedish concern of Svenska Aktiebolaget
1509 Gasaccumulator in Stockholm, Sweden, which is in evidence as Defendant's Exhibit 115, he says:

> "We have always told our licensees in the United States that, while we could guarantee them no protection on their exports to foreign countries, as a matter of policy we would not collect a second royalty on sets exported to foreign countries where Hazeltine had complete control of its patent situation. In those countries where the Hazeltine patents are included in an industrywide pool, they are, of course, beyond our control and our licensees have to make their own arrangements with such pool."

He knew that any licensee had to go to that pool and try and get a license, and he knew that they couldn't get the license except on the pool's terms, which I have outlined and read over and over again to your Honor.

And then in his letter of August 29, 1950, to Mr. R. D. Brown of Philco, he says:

> "Dear Reynie"—

1510 Mr. R. D. Brown, who is in the patent department of Philco.

> "With reference to your inquiry as to the foregn countries in which Hazeltine patents are included in pools so that Hazeltine does not have control over

them, I have now obtained the information you requested.

"At the present time the Hazeltine foreign patents are included in industry pools only in the following countries: England, Canada, Australia, New Zealand, and Sweden.

"There are, however, negotiations pending which may result in the inclusion of Hazeltine patents in pools in France and Germany."

Now, as to the method in which this tool operates and why the restrictions, we have in evidence a letter, Defendant's Exhibit 91, to Mr. Shackleford of the RCA Company in New York, from SMI. And EMI is the one that is in this pool over there, and under the applicable law is a co-conspirator with the Hazeltine Company. And this
1511 is written by Commander Mayer of EMI on the subject of EMI licensing, reporting on what he has found out from Shoenberg of EMI.

1512 And he says—I'm reading from Page 3 of the document:

"Shoenberg said that they could not agree to license foreign manufacturers to import into Great Britain, and he says this on the basis of his claim for exclusivity. In their view it would mean the immediate collapse of the whole licensing pool and of the revenue derived from it. They have always had to refuse to license imports from anywhere. British manufacturers are extremely jealous of importers, and although the Patent Act does not specifically support this attitude, there is no doubt that the old idea of patents giving a monopoly continues today and confirms a basis of a general licensing policy in Britain of using patents to build up trade and keep out cut-throat competition from foreign countries where prices may be cheaper."

Of course, anybody you are competing with, in any business, is cut-throat competition, improper competition.
1513 Anybody in one of these pools doesn't like competition, period. And that is the way we were kept out of Britain.

Now, we have got in this evidence letters from our distributors showing how they were harassed and so forth. And Mr. Wright testified that he went to the pool, he talked to the head of Pye Company, the chairman of the Board, and asked whether or not these restrictions were still in force and effect, and could be modified. Pye was in the pool. And he said no, no chance. And that's what we are facing in England. And those patents are worked into the package license here of the General Electric patents, at least, which Mr. Dodds has been running around trying to peddle here, there, hither and yon. And I'm sure he doesn't tell the people he is trying to deal with that, these patents are no good like he told your Honor; that there are 510 patents, and only four of them any good. That is the most ridiculous position I have ever heard taken in a lawsuit.

All right. So much for England. There again we are faced by absolute embargo. This is not a government
1514 embargo. We are not dealing with things erected by governments. We are dealing with things and agreements erected by our competitors, to prevent us from competing with them in the markets of this world. And that is the very thing that Section 1 of the antitrust laws of the United States is designed to prevent. And we are here, and we have every right to assert this.

You think the way Mr. Dodds talks that there was some reason why we can't assert the laws of this land in a situation like this. We haven't any apologies about our position. We are here to try to get our product in the avenues of trade of this world, and we are seeking and confidently asking on the basis of this record and the evidence that is

before your Honor, and the applicable decisions, that that relief be granted.

This is a company that looms large in the industrial picture of this country. And if ever a company was entitled to the protection of the American laws, it is the Zenith Company.

Now, we have the same thing over in Australia. I
1515 am not going to spend too much time on Australia.

The documents are here. We had the pooling agreements; they all say they can't import; they all have restrictions on import. Their output licenses have restrictions on importing.

There is one thing, however, with reference to it—well, there are a few things I want to refer to here. First, we find that we have the original agreement under which ARTS, the pool, was created. And it shows in the whereases where the patent rights are coming from:

> "Whereas, AWA owns or controls and will continue for the term of this Agreement to own or control for Australasia numerous patents relating to the field of radio purposes such rights including the right to grant sublicenses in Australasia in the field of radio purposes under the patents of Marconi's Wireless Telegraph Company, Limited of London, General Electric Company of America, Radio Corporation of America, and
> 1516 Telefunken, MBH of Germany"—

all of our old friends. We find them here—Western Electric Company, who was a defendant in the Zenith case, Electrical Research Products, Incorporated, of Delaware—all of our old friends here with their patents in this pool, including the Hazeltine Corporation.

1517 Now, we also have a little performance here—now you see it, now you don't. It's under this shell and that shell, and the shells keep moving around, and you don't know where you are, or whether he has patents, or

whether he has them in the pool, or whether they are here or whether they are there. That is the confusion that my opponent here is trying to produce in this record, and I am sure he is going to fool this Court with that.

We get down to the end of the thing, and we find that he has some very illuminating correspondence. He has a partner over there. He doesn't call him a partner; he says they are stockholders in this Neutrodyne Company. And the Neutrodyne Company puts its patents into the pool. But the only patents that Neutrodyne has are the Hazeltine patents, and the only stockholders that Neutrodyne has is Hazeltine, 70 per cent, and Electronic Industries Limited, 30 per cent.

And Mr. Warner says—if I can find that letter—he had some very pointed remarks to make about that.
1518 This didn't fool Mr. Warner any. He did what courts always do. He looked just right through the fiction, right to the substance of the matter to find out what was actually going on. He was talking in the realities of this situation. He wasn't wound up in any legal mumbo-jumbo about corporate entities and so forth, where they are all the same people.

"Dear Mr. Dodds"—

I'm reading from the letter of April 10, 1958—fairly recent—Defendant's Exhibit No. 203.

> "I have just returned from a meeting of the pool members at which certain verbal agreements were made."

You remember his counsel asked him whether there were any gentlemen's agreements anywhere? "No."

> "I have just returned from a meeting of the pool members at which certain verbal agreements were made, which I have no doubt will be put into operation, supported either by agreement between the parties or

that the parties will accept the minutes of the meeting as being the general authorization subject to any
1519 litigation being necessary, in which case more formal documents may be required."

They have agreements orally, awaiting to see if somebody sues them. And at that time, they think they can work out an agreement which will satisfy their defense in that lawsuit. That is the only inference you can draw from this letter.

He says:

"You will appreciate that I am the only remaining person in the pool which has been there since the pool was first started, which gives me a standing in the pool and an experience which exceeds that of others around the table."

His partner has been there from the beginning of it down to date. He isn't in it, and he has got this legal mumbo-jumbo he is going to use on the court.

"Generally, the division of the pool was based on the following factors:

"The patent strength of the member;
1520 "The power to support that strength with money and experience;

"The power to break up the other fellow's patent strength or to support it;

"The volume of payment to the pool by the licensor based upon his production of radio and television receivers (we are the strongest on this count);

"The prospects of future patents.

"The division determined upon was as follows:"

Now, this is the oral agreement; this is the real agreement. This is the one they made in that meeting which counsel says they don't have any such things.

"The division determined upon was as follows:

"Hazeltine, 21½ per cent of the gross receipts.

"EMI, 12 per cent;

"Philips, 22½ per cent;

"And the balance of 44 per cent to AWA and STC, out of which they pay the expenses of operating the
1521 pool—approximately 1 per cent."

So by the oral agreement of the conspirators, of which this man was there as a pool member, looking through all of this legal palaver, Hazeltine gets 21½ per cent of the gross receipts of this entire pool. Are they in it? I submit to your Honor on every decision that ever dealt with a pool question that they are in it. There is no way they can be held not to be in it. They have got their patents in it, and they have got 21½ per cent of the gross receipts. And he would have your Honor believe that all they are getting out of it is dividends on stock.

1522 Now, who is going to be fooled by that? I have come to the end of my argument on conspiracy, your Honor. I am not going to tax the patience of the Court with all the minutia of evidence on damages and the question of misuse. That all will be developed in the briefs. It is so clear, there is no defense to it. It is a matter of law. On that issue there is absolutely no defense. There is no defense to these conspiracy documents. The proofs are conceded. They are admitted.

There is practically, for all intents and purposes, a demure of the evidence, except the evidence they did put on strengthens the plaintiff's case. The documents on that Commission up there, which they are bound by—their evidence—shows the impact up in Canada. And the impact throughout the world is shown by the evidence that I have submitted here before your Honor.

I have argued and presented antitrust cases before, but never in my experience have I seen anything so completely,

utterly, absolutely documented all the way through.
1523 Your Honor doesn't have to infer one single thing in this. All that has to be done is to give legal fact to the act of these conspirators, the documents they signed, and what they were doing in these various markets throughout the world, to find here a violation of Section 1 of our American Antitrust Act, the Sherman Act, and its corresponding concomitant provisions in the Clayton Act.

As I said at the beginning, your Honor has been very patient and very courteous, and I have appreciated your attention. Thank you.

The Court: Well, Mr. Dodds, I ask this solely for information. I want you to have whatever time you feel that you require to reply. And if you feel that the balance of the morning is not enough, then I will make some arrangements about calling off something that is supposed to start at 2:00 o'clock.

If you would like additional time this afternoon, I will give it to you.

Mr. Dodds: Well, your Honor, as far and as closely as I can estimate, I had thought about an hour and a half. Mr. McConnell had indicated to the Court that he would want about an hour and a half, but you see it has
1524 taken nearly two hours and a half. But I would estimate an hour and a half.

The Court: I understand.

Mr. Clerk, will you call the plaintiff and defendant, and tell them we will pick the jury tomorrow morning.

We will take our morning recess.

(A short recess was taken, after which the following further proceedings were had herein:)

1525 *Closing Argument on Behalf of Plaintiff and Counter-Defendant by Mr. Dobbs.*

Mr. Dodds: May it please the Court—

The Court: Mr. Dodds.

Mr. Dodds: It is not within my powers to treat the Court to the heights of forensic display of my amiable and gracious opponent, but I shall try to compensate in part by sticking to the facts, and particularly the facts of record, and leave the Alice in Wonderland tales to Louis Carroll.

Mr. McConnell has carefully shielded the Court from Zenith's documentary evidence, and I presume that that was by design. It permits him to speak very freely, uninhibited by the facts.

The misstatements in Mr. McConnell's closing statement are so numerous and so glaring that it is difficult to resist following their beckoning allure, but I believe that it would be more helpful to the Court to point out what the facts are rather than what the facts are not, and I shall
1526 reserve the comments on Mr. McConnell's statement until the conclusion of my own statement.

However, there are just two introductory comments that I think are appropriate, one is to call attention to the Court that these various documents from which Mr. McConnell was reading, with the exception of the correspondence from the Hazeltine files, are all unproved documents from the alleged co-conspirators which, under the Court's ruling, cannot be used to show a conspiracy, the existence of a conspiracy, but only the effects once the conspiracy is otherwise proved.

Mr. McConnell in his argument yesterday painted what seemed to use a rather ludicrous picture of Hazeltine, the plaintiff here, with a gross income of half a million dollars, intimidating Zenith, an industrial giant whose last annual

report shows net sales of over 300 million, 600 times the size of Hazeltine.

Mr. McConnell points to the fact that Hazeltine has some 500 patents, and says that it can sue Zenith one by one on these 500 patents.

He also refers to the cost of litigation of one patent
1527 in Delaware as a million dollars. Using that figure, it is not hard to figure out how long Hazeltine would last in bringing 500 suits at a million dollars apiece.

The situation is somewhat analogous, it strikes us, to that which your Honor may recall in international affairs a number of years ago when Russia claimed that Finland was threatening and intimidating it and used that as a pretext for attack.

Now, actually, there are just two basic issues before the Court for decision; one, has Hazeltine forced package licensing on the United States television industry, which if it has, would constitute a misuse of the patents and render them unenforceable; and, secondly, has Hazeltine conspired with certain foreign companies to restrict export of United States television receivers into their respective territories, and, if so, it is clear that that would constitute a violation of the antitrust laws.

Now, these two issues are completely and totally unrelated, and it is totally different evidence which will be required in determining those issues. Mr. McConnell
1528 agreed to this at Page 622 in the record, admitting that the package licensing of the Hazeltine patents, and I quote:

"—didn't have anything to do with the over-all conspiracy."

1529 Now, let's talk about the U. S. licensing first, and that falls naturally into two categories, monochrome and color, primarily on a historical basis because mono-

chrome television receivers were manufactured and licensed many years before color made its advent. Now, with respect to monochrome television receivers your Honor may recall the testimony of Mr. Thomas in the earlier stage that there was a large group of major television receiver manufacturers which were licensed under the single patent in suit, but that there were three that by election had a license under all of the Hazeltine patents, those being RCA, Admiral and Olympic.

And a typical license in respect to monochrome receivers was that of the Magnavox, which is the standard 918 form about which there was so much comment, Exhibit DX-2, plus a series of modifying letters, which were Exhibits PL-52 through 55, and you will recall that one of these modifying letters had the effect of doing three things, deleting sound radios and color television from the license, thus restricting it solely to monochrome television receivers; two, limiting the license to two enumerated pat-
1530 ents; and, three, reducing the lump sum payment from $50,000 a year to $40,000 a year. That was PL-52.

The next modifying letter, PL-53, adjusted the royalty base because Magnavox sold directly to dealers without the intermediary of a distributor and therefore it assumed the cost and functions of a distributor. That was PL-53.

A third one, PL-54, limited the license to a single patent, the single patent in suit, and again reduced the royalties still further, reducing the lump sum a $25,000.

And the fourth letter, PL-55, represented a further adjustment of the royalty base because of sales to dealers and their cost of distributing, which they absorbed.

And these documents you will recall were introduced to negative the fact that there was any "standard" which all licensees had to take or leave. And the testimony was that virtually every license was non-standard in the sense that

there were modifying letters to meet the special needs
1531 of a particular licensee.

Now, there was some conversation about the 50 per cent, 80 per cent, 100 per cent formula, and whether that in itself constituted a misuse of the patents. And the testimony shows that that formula, after being arrived at, was offered voluntarily to holders of the package license, thereby permitting them to reduce their royalty obligations under the licenses even though they had contractual obligations at a higher rate.

The testimony also shows that Hazeltine never refused to grant a license under any one or more patents selected by a licensee or prospective licensee and that it never applied economic coercion to induce a licensee to accept the package but, on the contrary, voluntarily offered it the opportunity to do so, even though by contractual obligation it was not required.

And we submit that Hazeltine practices, and we are still talking about monochrome, are clearly within the sanction of the attorney general's committee report.

You may recall that that committee was appointed
1532 by the attorney general and comprised of some fifty-odd very prominent antitrust lawyers in the United States. It had two co-chairmen; one was Judge Stanley Barnes, who was then assistant attorney general in charge of the antitrust division of the Department of Justice, and his co-chairman was Professor Oppenheim of the University of Michigan Law School, and that group investigated all facets of antitrust laws, and it had a chapter on patents and it had a subsection on package licensing, and I would like to ask the Court's indulgence to read a brief excerpt from that report at Page 239, and this is an official government publication set for sale by the Superintendent of Documents, Washington, D. C., and it came out in 1955:

"Package Licensing.

"A package license may include more than one or all of the licensor's patents. Packaging is frequently used to avoid troublesome questions of infringement, complex bookkeeping, the difficulty of determining which patents cover the present and future needs of
1533 the licensee, cost differences, and similar practical considerations.

1534 "A positive vice of this practice lies in its potential use to coerce the licensee to accept a license under one patent on condition of acceptance of a license under another, or the entire package. By analogy to 'tying clause' cases, the Supreme Court condemned this practice in *Ethyl Gasoline Corp.* v. *United States.*"

Then skipping a sentence, which was just a brief of that decision:

"And in *United States* v *Paramount Pictures,* this disapproval was extended to the analogous 'block booking' of copyrighted films. There the Supreme Court held illegal a refusal to license one or more copyrights unless another copyright is accepted. But the court was quick to add: 'We do not suggest that films may not be sold in blocks or groups, when there is no requirement, express or implied, for the purchase of more than one film.'

1535 "In *Automatic Radio Mfg. Co., Inc.* v. *Hazeltine Research, Inc.,* absent a requirement to accept a license on all patents or none, and absent the condition of acceptance of another and different license, the Supreme Court sanctioned a license of all of Hazeltine's patents and developments for royalty measured by a percentage of the licensee's sales of all equipment in the field of the license.

"We approve these decisions. Yet we think that the

courts have properly distinguished a package license for reasons of convenience and made without coercion. Furthermore, we believe that strictures against package licensing should not be applied to frustrate good faith license offers. Package licensing should be prohibited only where there is refusal, after a request, to license less than a complete package. Additionally, the licensor should not be required to justify on any proportional basis the royalty rate for less than the
1536 complete package, so long as the rate set is not so disproportionate as to amount to a refusal to license less than the complete package."

And then skipping:

"Moreover, where several 'per piece' licenses are requested and offered, the mere fact that the sum of the 'per piece' license royalties exceeds the package royalty rate should not of itself be considered a condition that all or no patents be taken, again, so long as the 'per piece' rate is not so disproportionate as to amount to a refusal to license less than the complete package."

We submit that there is no authority whatever for holding that practices followed by Hazeltine represent a misuse of the patents under the law.

1537 Zenith has cited in its pre-trial brief the American Security case which ended up in the Court of Appeals for the Third Circuit, but in that case the patent owner, who had a group of patents, was charging the same royalty whether you took one, two or the entire package.

It is not outlawed by the decision in Loews, the Supreme Court case cited in the pre-trial brief in which there was a refusal to quote individual rates of various motion picture films. So much for monochrome.

Now, let's take up color. Upon the advent of color tele-

vision the license form 918, which we have discussed, was in use, and that was in 1958 that it was adopted. At that time only RCA was producing color sets, and only in very small quantity. Due to the recent exploration of a number of the Hazeltine patents which were important with respect to monochrome television, the royalty rates in monochrome had been progressively hammered down.

The Hazeltine color patents, on the other hand, 1538 were considered very important, and they represented inventions coming out of an investment of several millions of dollars in research and development into color television.

So as other companies began to get into production of color television it was apparent that this form 918 would not serve as a basis for an equitable royalty return on color receivers. At about that time Mr. Ruestow wrote his memorandum to Mr. Wilson, that is Exhibit DX 23, recommending changes in licensing practice to get an equitable return on color, and at about that time the management concluded to abandon the use of license form 918 insofar as color television was concerned.

Concurrently, the legal personnel of Hazeltine assumed the task of hammering out a new license which would satisfy several conditions; first, it must assure a reasonable royalty return on the company's important color television patents in which it invested so much money; B, it must have a maximum or several maxima which would meet the almost infinite resistance of the licensees to 1539 the industry to a license that had no ceiling. Certain of the leading units in the industry absolutely refused as a matter of policy to consider any license that didn't have a ceiling in it.

Third, it must permit the licensee to select any one or more patents which it might choose, as it preferred, and yet at the same time also permit those who preferred a

package license to have a package license, and this must be done without any discrimination between the groups.

And, lastly, it must avoid the pitfalls of the misuse doctrine of which all were aware. And that was a rather formidable task, and the testimony shows that the people struggling with this prepared numerous drafts. They were prepared and discarded, and prepared and discarded. There were numerous conferences. There was eminent outside counsel called in, Mr. Edward H. McDermott, the senior member of the firm of McDermott, Will and Emery here in Chicago; Mr. W. Houston Kenyon of the firm of
1540 Kenyon & Kenyon of New York; Mr. Diggins, who is of Counsel here.

As of the time of the filing of the counter-claim, the latest proposal superseding all of these preliminary drafts and attempts included a royalty schedule of the latter two licenses including a letter to Zenith here of March 20, '63, which is Exhibit DX 15 as modified by a supplement sent out two months later under date of May 20, '63, Exhibit DX 16, superseding all prior drafts. The testimony is that these offers were circulated both to licensees and non-licensees.

1541 The testimony is, also, that there was a further complication. Your Honor will recall testimony that there was an outstanding license at that time to RCA, which did include an over-all maximum of $200,000 per year.

Now, just as a practical business fact, it just isn't possible to license A at a royalty which is going to considerably exceed $200,000 a year when his competitor B has a license on which he only has to pay $200,000 a year; so these schedules, and all of the provisions which were offered, concluded the provision that these increased rates did not go into effect until June 30, 1966, after the commitments at the $200,000 rate had all expired. And that maximum of

$200000 per year during the interim period was offered to anyone, whether it had a package license or whether it had a license under a few patents.

Mr. Westermann testified to that at Pages 921 and 922 of the record, and Exhibit DX-37, which was a report of Mr. Ruestow's to the Board of Directors of Hazeltine included the statement that under the new plan no
1542 licensee would pay more than RCA, that is, the $200,000, during this interim period.

Furthermore, the testimony was that this offer, which was made up of a combination of these letters of March 20 and May 20, were not final offers, they were not take-it-or-leave-it offers, they were offers to negotiate. And as the court aptly characterized them at Page 923, they constituted the best offer that Hazeltine had that day, to which Mr. McConnell agreed.

Now, as of the filing of the counterclaim, two months after the first proposal, DX-15, and substantially concurrently with the second proposal, understandably no license had been granted, because ordinarily license negotiations extend over quite a period of haggling.

The story of this evolution was told by Mr. Westermann at Pages 899 to 930 of the record.

It is just difficult for us to see how that these birth pangs of a new license, even before birth, represent any actual effective misuse of the patents. So much for the allegation of the misuse of the domestic patents.

1543 We turn to the foreign arrangements. In earlier years Hazeltine Corporation made certain abortive attempts to license its patents abroad. It even set up a little company in England jointly with others called Hazelpat, and that agreement is Exhibit DX-41. That was in 1933.

In the early days it also licensed some small manufacturers in Canada and finally made a deal with the Philco

Corporation to use its patents in Canada. And contrary to Mr. McConnell's assertion, the arrangement with the Philco Company was not to get Philco in the pool. It was the basis of bringing suit against the pool members to force them to grant Philco a license.

Those early attempts of Hazeltine to exploit its foreign patents proved unsuccessful. They concluded that in order to do business in foreign countries it was necessary to do business the way they did it there.

And prior to the advent of Hazeltine in this foreign licensing business, or attempts at foreign licensing
1544 business, there were already industrywide patent pools set up in Canada, England and Australia. They were set up for various reasons. McConnell says that it was set up as a conspiracy to keep out importation. There isn't any evidence of that. It was set up for, among other reasons, because there were conflicting patents of different companies that applied different parts to a set. It was the infancy of the radio business and most manufacturers did not wnat to have to negotiate licenses with four or five different patent holders. They preferred to negotiate one license and forget about it.

1545 Now, this talk, to return to Canada—and at the outset, I should like to apologize for the denial of my language at page 136 of the record, which I had honestly forgotten, where I stated that Hazeltine was in the Pool in Canada. That was an unfortunate choice of language, but whether or not Hazeltine is or is not in the Pool will be determined by the contractual documents which are in evidence.

Now, in 1943 CRPL approached Hazeltine to negotiate for the acquisition of the rights under the Hazeltine patents, having smarted a bit by the suits brought by Philco against its members when Philco owned the rights to the Hazeltine Canadian patents. That agreement, which

is DX 118, and the extension, was still in force at the time of the filing of the counter-claim.

Now, the relevant clauses of that agreement are these, Article 3:

> "Licensor hereby grants to the licensee for the term of this agreement the exclusive and divisible license with a right to license others to make within the
1546 Dominion of Canada the licensed apparatus specified within Section 2 hereinafter and to sell said apparatus made by licensee or its sub-licensees to others for the uses specified in Section 2 hereinafter, and for resale for such uses."

The following language, I believe, is not relevant.

And then turning to Article 6 of the same agreement, which Mr. McConnell conveniently did not read, it says:

> "Licensee or any of its sublicensees may import into Canada apparatus which is commercially unsound or impracticable for a licensee or any of its sublicensees to manufacture unless it shall reasonably appear that such importation shall constitute grounds or part thereof for requiring the grant of compulsory licenses to others in accordance with the Canadian Patent Act under the patents of licensor, or grounds or part
1547 thereof for forfeiture in accordance with the Canadian Patent Act of licensors' patents, and licensee agrees and will require sub-licensees to agree to manufacture in Canada such proportion of their total licensed apparatus sold herunder as may from time to time be necessary to satisfy the requirements of the Patent Act in order to prevent the granting of compulsory licenses to others and in order to prevent the forfeiture of licensors' patents thereunder."

So there was no refusal to license importation. There was only a refusal in compulsory licenses or forfeiture

as the provisions of the Canadian Act were from time to time interpreted by the Canadian courts.

Now, there is another factor. Mr. McConnell insists repeatedly over and over and over that we are prohibiting the importation in Canada. There was never any
1548 prohibition of importation into Canada. CRPL or Hazeltine are powerless to prohibit importation. All they can do is to refuse to license.

And if someone imports into Canada a piece of apparatus which is infringing, they take the same chance as if they were infringing in this country; they risk the possibility of an infringement suit.

There is not now and there never has been any prohibition, contractual or otherwise, of importation in Canada.

Now, in spite of what Mr. McConnell says, Hazeltine never was and is not now a member of CRPL. It has nothing to do with its policies. It has never attended any of the meetings of the directors or stockholders. It has no knowledge of them or of the management.

During a deposition of myself, I was asked who were the directors, who were the officers, and I honestly had to say that I didn't know and I never knew. I was never told. We weren't interested.

1549 Now, let's talk about this question of sale of patent rights. We earnestly submit, your Honor, that what we did was simply sell our rights. We might have sold some office furniture. I suppose CRPL couldn't do business if it didn't have furniture in an office, and we did sell them rights.

Now, I want to refer to the statute, Section 261, which says:

> "Subject to the provisions of this title patents shall have the attributes of personal property."

Now, obviously, our Congress cannot enact what the attributes of foreign patents are, but there is no evidence that foreign patents have attributes any different from domestic patents, and they have the attributes of personal property.

1550 Now, there are numerous authorities to the effect that the grant of an exclusive license where the grantor parts with his control over the patent is equal to a sale. Now, most of these decisions, your Honor, arise under an Internal Revenue law, strangely, because there is a section in there which says that the sale of a patent or patent rights shall constitute long-term capital gains rather than short-term capital gains if certain conditions are satisfied.

Now, the Internal Revenue Department for many years, didn't like that and refused to accept it, so there was a great deal of litigation. But the courts consistently held that the grant of an exclusive license for the grantor parting with control of the patent was a sale, legally, and provided the owner of the patent with capital gains privileges. And more recently, I don't recall the exact date, the Internal Revenue Code was amended to give specific effect to that.

Now, any use of these rights which Hazeltine has sold to CRPL can be only in Canada. A patent in any country is issued by the sovereign of that country and has

1551 effect only within the territorial boundaries of that country.

Any use of the Hazeltine Canadian patents can only be in Canada. The members of the CRPL are all Canadian companies.

As your Honor aptly suggested, perhaps they are conspiring under the Canadian law. We don't believe so, but even if they were, it would be a conspiracy in Canada under Canadian law and could have no extra territorial effect.

However, we have something on that. In the Exhibit PL-50, the report of the Royal Commission, at Page 92 appears this language:

> "CRPL, as it is now organized and as it now operates does not appear to us to be illegal. It is not illegal to acquire a portfolio of patents either by way of ownership of the patents or by way of acquiring a right to grant licenses. The mere control of a sector of industry—"

The Court: Doesn't that indicate that they consider the right to grant—acquiring the right to grant licenses may be different than ownership, because they use the
1552 word just before that, ownership or the right to grant licenses.

Mr. Dodds: I am sorry, I don't believe I can interpret beyond what is in the language. I understand it to mean either the ownership of a patent or the acquisition of the right to grant licenses.

The Court: All right.

Mr. Dodds: (Reading.)

> "The mere control over a sector of industry through the accumulation of patents is not in itself illegal. The complaint against CRPL is that it refused to grant a license to import. In refusing to grant such a license, CRPL was not going beyond its legal right when manufacture was taking place in Canada pursuant to licenses granted by it in this country at reasonable royalty rates."

Now, Mr. McConnell seeks to impugn the integrity of this Royal Commission, but as Mr. Henderson pointed out, the membership of the committee included some very
1553 eminent Canadians. There is certainly nothing of evidence in this case to impugn the integrity of that group.

And since the CRPL operates exclusively in Canada, it is very clear that it cannot possibly violate United States law. Moreover, as a pratical matter, the mere fact that Hazeltine patents are in CRPL has no practical effect on licensing importation one way or the other, because if Hazeltine owned those patents and continued to own them, it undoubtedly would feel constrained to administer them in the same way in order to avoid the risks about which Mr. Henderson testified the other day that naturally flowed by unrestricted license of importation.

1554 So much for the matter of law. Now, let's come to the facts. Let's assume arguendo; that Hazeltine's patents were involved in activities in Canada violative of the antitrust laws. That's only one string to the bull. Zenith must show that it was damaged by those activities.

So, thus, we believe that the evidence shows conclusively that Zenith has not lost any business due to the presence of the Hazeltine patents in the CRPL. This is for several reasons. They may have lost business, but not because of the Hazeltine patents in the CRPL.

First, as I mentioned previously, neither CRPL nor anyone can prevent or prohibit Zenith from importing sets into Canada. If the importing of sets infringes Canadian patents they can be sued the same as they can be here. Now, Mr. Crotty admited—and this at page 875 of the record—that he knew of no Hazeltine Canadian patent which he considered valid and covered any Zenith television receivers. So the risk, insofar as the Hazel-

1555 tine patents is concerned is no greater in importing into Canada than as selling them here. Further, as a matter of policy, Mr. Crotty testified—and this is at pages 873 and 874 of the record—that Zenith indemnifies its dealers and distributors against patent infringement. I don't think anyone will question that Zenith is a financially responsible organization. I can't imagine a little

dealer in Saskatchewan being concerned if Zenith indemnified it and undertook to come in and save it harmless from any patent infringement suit. ... it received a summons in an infringement suit, it would merely hand it over to Zenith and say, "How about it?"

Furthermore, it is interesting that Mr. Crotty said that during his employment with Zenith—and that started in 1948—they had never had occasion to indemnify any Zenith dealer against infringement action. That is at pages 548 and 874 of the transcript.

Fourthly, Mr. Wright testified that the last time that CRPL interfered with the importation of Zenith
1556 radios was in 1958. And I think the testimony has shown—it is a little diffuse—that there haven't been any effective radio patents—certainly Hazeltine hasn't had any since 1955. And this lack of interference by CRPL with respect to Zenith and its distributors and its dealers is in spite of the fact that during that period, by Mr. Stevenson's account, Zenith imported into Canada 57,000 television receivers and 157,000 radios.

Mr. Wright also testified—and this is at pages 707 to 709 of the record—that Zenith had made no attempt to market radios in Canada since 1958.

Now, they say, "Oh, we can't market radios without marketing television sets." I say that is a commercial problem, not a legal problem.

Now, Mr. Wright was reasonably frank when he admitted at pages 685 to 686 of the record that it would be, and I quote "very difficult" to say what might have happened under different circumstances. And to estimate, as he did, that Zenith, if licensed under the patents of
1557 Hazeltine, would achieve the same share of the market as they have achieved here in the United States, having built up that market and dealer organization since the

'20's is wild speculation. It is certainly not a sufficient basis on which any damages can be calculated.

1558 Moreover, Mr. Wright testified that Zenith of Canada—I won't go into the exact corporate title—a major distributor of Zenith's products, was never sued by CRPL for importation of radio or television receivers. That is at page 717 of the record. And I believe Mr. Crotty testified that Zenith of Canada was one of the major distributors of radio and television products there.

Moreover, your Honor, it just isn't credible that Zenith is so earnestly seeking a license under the Hazeltine Canadian patents, when it is so assiduously avoiding a license under the counterpart patents in the United States. Why is it that the Canadian Hazeltine patents are so valuable and the American Hazeltine patents so worthless? And the testimony in there are counterparts.

As has been suggested before, the evidence is quite clear that what Zenith really wants is to be able to appropriate somebody else's property without payment, even to the point of falsely accusing of illegal activity.

1559 Now, let's go to England. After the failure of the Hazelpat venture, the small company formed in '33, Mr. Binns—who was then the principal executive officer of Hazelfine—went to England. And he made an attempt to interest some concern in the promoting of the use of the valuable Hazeltine inventions. What resulted was called an informal "Heads of Proposed Agreement." That is DX 42, dated May 31, 1938. And I would like to read the pertinent clauses.

Paragraph 2 of this agreement reads:

"GEC"—and that is the General Electric Company Limited—

"to have the right to sue infringers under the British Hazeltine patents at its own cost, and to receive any recoveries arising therefrom. GEC will act in con-

junction with Hazeltine in any infringement or revocation actions as far as possible and will consult with Hazeltine thereon.

"Paragraph 3: GEC shall have complete freedom
1560 to use the British Hazeltine patents as a bargaining aspect in order to secure entry into the Pool as a licensor, or the use of the patents for the purpose of licensing third parties.

Those are the only clauses that say anything about granting: There is no restriction on the General Electric Company licensing importation. There is no restriction of any kind. Effectively, it is an exclusive license to the General Electric Company which, as I say, under the authorities represents a sale of certain rights in those patents by Hazeltine to General Electric Company.

The Court: Wasn't this renewed from year to year, though?

Mr. Dodds: Well, I'm coming to that, your Honor. That was shortly succeeded. This was an informal agreement of May 31, '38. That was shortly thereafter succeeded by an agreement which is DX 43B, an agreement dated April 6, 1939 but effective August 28, 1938, only a matter of a few months after the informal agreement.

1561 So let's look and see what that agreement says about what rights Hazeltine sold to General Electric Company. And we refer to paragraph 1 of that agreement; it says:

"For the consideration hereinafter mentioned, the corporation"—

and that is Hazeltine—

"hereby grants unto the company"—

and that is GEC—

"the right to utilize the Hazeltine patents hereinbefore referred to for the purpose of securing entry as

a licensor into any British Wireless Broadcast Pool which may be formed on such terms as the company may deem proper or otherwise to deal with said patents by way of granting sub-licenses thereunder and generally to utilize such rights for the purpose of consolidating the position of the company in the radio industry and carrying on business in radio and television."

1562 And paragraph 4 of this same agreement reads:

"In the event of the company not entering a British Wireless Broadcast Pool as a licensor, they will confer with the corporation as to the division of any net income remaining to them as a result of the grants of sub-licenses under the Hazeltine patents."

Where is the restrictions? Where is the restrictions on importation? Where is the restrictions on anything? It is a sale of an exclusive right to General Electric Company of rights under the Hazeltine British patents without any restrictions whatever.

1563 Now, that agreement, the first formal agreement of 1938, has been renewed from time to time and is still in force. The renewals contain certain modifications which I believe are not material here. That was the basic substance of the agreement between Hazeltine Company and the General Electric Company, Limited.

The Court: But if it is a sale, don't they lose their right to modify?

Mr. Dodds: During the term of the agreement, they lose all control of the patents insofar as Great Britain is concerned, yes.

Now, as I have mentioned before, prior to the time of this agreement up to the present time, there has been an industrywide patent pool with respect to radio and television receivers. That's the way the British like to do business.

We may not agree with it, but that is the way they do business.

Now, after this first agreement, General Electric Company did negotiate with the pool, and it became a member of the pool. And it placed its own patents and Hazeltine's patents at the disposal of the pool. And the pool
1564 agreements, of which the General Electric Company, Limited, was a member—again, those have been renewed from time to time, and, you may recall, they were identified as the A.5 pools, the A.6 pools, the A.7 pools, and the current one is the A.8 pool. And that pool grants licenses to British radio and television manufacturers. And it is true that these licenses issued under the A.5, A.6, A.7 pools only explicity grant a license to manufacture in Great Britain. It is also true that the earlier licenses up through the A.7 did include a covenant on the part of the licensee not to sell imported apparatus without the consent of the pool. It was not an expressed prohibition, but merely required the consent of the pool, which, as your Honor will recall, was run by a committee.

It is also true that for quite a period of time the pool customarily refused to consent to the grant of such importation. For example, I just might refer to the clause in the A.7S and the A.7T agreement. The A.7S was an agreement relating to the licensing of radio and sound receivers. That is Exhibit DX-66, and—I am sorry—
1565 and A.7T was a corresponding license with respect to television receivers. And the terms are substantially the same except for the different definitions and characterization of the apparatus that was licensed.

Now, in the A.7 license issued by the pool—incidentally, I would just like to interject: As I understood Mr. McConnell's presentation, he slipped back and forth frequently and readily between the pool agreements, that is, the agreements between the members of the pool; and the pool li-

censes, that is, the licenses issued by the pool to manufacturers. Those licenses also being issued to the members themselves, the members of the pool themselves took licenses under the pool patents.

So in this A.7S license, Exhibit 66, Clause 4(a) reads:

> "not without the previous written consent of the grantors to sell within the said territory and broadcast sound receiver which has not been manufactured in the territory for which this license is granted."

1556 However, let's take a look at the current license issued by the pool; that is, the A.8 pool. And we might look at DX-70, and that is the current pool license on sound. And DX-71 is the current pool license to manufacturers with respect to television. And, again, they are about the same except for a description of the apparatus licensed.

1567 Now, we find this document on its face states that it becomes effective on July 1, 1960, about three and a half years ago, and shall continue until June 30, 1964. Now, the clause which I quoted in the previous license has now been dropped out. That is not in there anymore. There is no—however, in the latest form, there is no express license to import, but there is no agreement not to import. I'm sure your Honor will understand the difference between the mere absence of a license to import, and an affirmative agreement in concert not to import. They are quite different things.

The Court: I agree.

Mr. Dodds: Furthermore, in this license, the current one, there is no restriction on importing an uninfringing apparatus. If a licensee imports infringing apparatus, and it infringes somebody's patent, he runs the same risk as in any other country—here and any other place. He can take or not as he elects.

Now, again, as in Canada, let's just assume arguendo,

that Hazeltine is involved in activities violative of the antitrust laws. That still by itself does not entitle
1568 Zenith to any relief. It must show that in some way it is damaged by those activities. And we submit, and I shall review the evidence, that Zenith has not shown that any loss in business in England was due to the Hazeltine patents, for serveral reasons.

In the first place, I repeat—only because Mr. McConnell repeated it over and over again, apparently on the theory which I understand is a basic foundation of propaganda, that if an untruth is repeated often enough, people will begin to believe it—neither the Pool or anyone else can prevent Zenith from importing into Great Britain. If it imports sets into Britain which infringe British patents, it can be sued as here. But neither the Pool nor Hazeltine or anybody else has any power to prevent Zenith from importing sets to any place on this globe.

Point number two: The testimony is that at present, there is no Hazeltine British patent covering commercial television receivers. And the reason for that is, as we
1569 pointed out, the receivers sold in Britain are quite different from the United States because of the different standards. And the patent, for example, that it is being sued on in this case just isn't applicable to a system that uses positive modulation. I shouldn't say it isn't applicable. It is economically attractive; it isn't needed; and it is not used.

Mr. Wright admitted—and this is at page 719 to 720 of the record—that he had no knowledge of anv Hazeltine patent which would prevent importation of Zenith receivers, television receivers, and that he had no investigation of the subject made. There is no evidence that any such Hazeltine patent exists. As a matter of fact, it doesn't. Any impediment to the importation of television receivers into Great Britain was not as a result of Hazeltine's patents.

And whether Hazeltine patents are in the Pool or not does not in one iota affect any impediment to Zenith's importation of television receivers into Great Britain, as in Canada —I'm sorry, not as in Canada.

1570 But the third point is, as in Canada—I will just mention this and I won't discuss it again—Zenith gives its dealer indemnification which, in effect, eliminates concern on their part. And again, as in Canada, it is generally acknowledged that all troublesome radio patents have expired.

1571 Mr. Wright admitted—and this is at page 710 of the record — that Zenith had encountered no interference from the British Pool with respect to radios since 1958. Lastly, I think it was Mr. Kaplan, at page 816 of the record, that decided that if there were no impedimenta, Zenith might expect to achieve a quarter as much—a quarter as large a share of the market as they do in this country. You may recall that they had something—20% plus in this country. But due to difficulties of different standards, distance, building up dealers, distributors, he estimated that they might be expected to achieve a quarter as much, or about 5% of the British market. But he euphemistically termed this 25% share "somewhat arbitrary."

We submit it is not ~~any~~ rational basis on which damages could be computed, and for all of those reasons, we submit that even assuming for the sake of argument that Hazeltine's associations with the British Patent Pool constituted an illegal activity, Zenith has not shown any damages.

1572 Now, let's come to Australia. Now, there, Hazeltine has a partially owned subsidiary known as Neutrodyne Proprietary Limited. There is only one agreement, and quite an old agreement. It was signed or negotiated back in 1928.

There is no evidence as to the circumstances of the formation of Neutrodyne and the agreement with Hazeltine.

Unfortunately, there is no one in this country still alive who knows that. And I might just interject this, the rather caustic comment by Mr. McConnell about the fact that I took the witness stand in spite of the fact that he called me as a witness first, and I took the witness stand only to refute or to complete the questions which he asked—I think as has been previously pointed out, unfortunately, the only persons having familiarity with the Hazeltine foreign licensing situation up until the last two or three years were Mr. McDonald, Mr. Binns and Mr. MacFarland, who are all deceased.

The Court: Do you care to go to Australia at 2:00 o'clock rather than now?

1573 Mr. Dodds: Surely.

The Court: We will take our noon recess until 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day, February 26, 1964.)

1574 • • (Caption—59-C-1847) • •

Before the Hon. Richard B. Austin.
Wednesday, February 26, 1964.
2:00 o'clock, p.m.

The trial was resumed pursuant to recess.

Present:

Mr. Dodds,
Mr. Diggins,
Mr. Ruestow,
Mr. McConnell,
Mr. Curtis,
Mr. Crotty.

1575 The Clerk: Case on trial.

Mr. Dodds: We had just proceeded down to Australia, and I mentioned the organization of the Neutrodyne Proprietary, Limited, which is 70 per cent owned by Hazeltine. There was an agreement between Hazeltine and Neutrodyne which established the rights which Hazeltine was to transfer to Neutrodyne, and that is DX-180, and this is a rather informal agreement, this 1928 agreement according to present standards, and it—in accordance with the U. S. practice, I gather from its drafting that it was prepared in Australia.

I would like to quote the actual grant, what was granted to Neutrodyne by that agreement, and it is odd in the sense that the grant appears to be in one of the recital clauses rather than in one of the numbered paragraphs, which reads:

> "And Whereas as the Hazeltine Corporation has agreed to give and to grant unto the Neutrodyne Company the sole and exclusive right and authority to

grant non-exclusive, non-divisible, non-transferable,
1576 limited licenses under the above-recited letters patent to individuals, firms, partnerships and companies now engaged in or to be engaged in trading or dealing in or in the manufacture of radio receivers in the Commonwealth of Australia."

And there is, of course, no restriction whatever placed upon the nature and character of the licenses which Neutrodyne can grant under that agreement.

That agreement has been obsoleted in practice, though it has never actually been formally amended. The practice insofar as the granting clause is the same, but it so happens that that agreement refers to specifically enumerated patents, and in the meantime other patents covering Hazeltine inventions have flowed to Neutrodyne.

1577 Now, the first implementation of that agreement by way of exploitation of the Hazeltine invention in Australia was an agreement dated April 12, 1934 with ARTS, the Pool which was previously formed in Australia. So we might look at the Neutrodyne agreement with ARTS. And the granting clause in that agreement is paragraph 5 and it says:

"In consideration of the premises and of the payment of Neutrodyne of the royalties hereinafter mentioned in manner hereinafter provided, Neutrodyne, except insofar as it may be unable to do so by reason of the terms, conditions, agreements, and covenants expressed and contained in existing agreements made between Neutrodyne and the other parties whose names and addresses are set forth in the third schedule hereto, hereby grants to ARTS for the term herein mentioned, the subject as hereinafter provided, the otherwise exclusive right and authority to grant sub-
1578 licenses to third parties (hereinafter called licensees),

to use, manufacture and sell in the Commonwealth of Australia and/or Dominion of New Zealand and broadcast receivers as herein defined, the subject of the present and future letters patent owned or controlled by it, conditionally on such sub-licenses being non-assignable by ARTS or its licensees."

Again, no restrictions on importation. In fact, no restriction whatever, but effectively a sale of certain rights in the Neutrodyne Austrlian patents to ARTS for a period of years.

The Court: And that period is what, Mr. Dodds—I mean, approximately?

Mr. Dodds: My recollection was that it was originally for a limited period of years, subject to renewal from year to year, subject to cancellation by either party on certain notice, which has not been given. So that that agreement is still at least technically in effect.

1579 The Court: I mean, it is not a beginning of the world—

Mr. Dodds: No.

The Court: It is a kind of a conditional sales contract?

Mr. Dodds: Right.

The Court: All right.

Mr. Dodds: Now, there have been discussed here a series of licenses issued by the Pool ARTS to the Australian manufacturers. And those, as in Great Britain, bear a series of sequential numbers, only there happened to have been no number two. There is number one, three, five, six, and seven, I believe.

There also have been presented here forms 3B, 6B and 7B of whic hthe testimony is they were issued to local assemblers.

Now, the early form of these licenses issued by ARTS to the Australian radio industry—and, of course, there was no television at that time—followed rather closely the

forms followed by the British Pool. And they did contain a restriction against importation without the consent of ARTS. For example, in the form 3 license, Num-
1580 ber 3—which is DX 189—clause 4(b) is a clause quite similar to the clauses found in the British licenses, licenses under the British licensing Pool, reading:

> "Not without the previous written consent of the grantor to sell or hire or offer or expose for sale or hire in the territory in which this license is granted any broadcast receiving apparatus or radio gramophone which has not been manufactured in the territory for which this license is granted.

1581 Now, the later forms, however, starting with No. 5 —which is DX-192—and is a license agreement which commenced January 1, 1951, and continued until June 30, 1953, and, in the following one, No. 6, DX-193, this restriction on importation was dropped. And it was continued only in the licenses to these local assemblers—Nos. 3-B, 6-B, 7-B. There is no 5-B in evidence. Whether there was at all, we don't know.

Also, there is testimony to the effect that the policy of ARTS has always been to license importation of both radio and television receivers. But there were other handicaps which limited importation to Australia, and I refer to DX-213, a letter from Mr. Klapp to Mr. A. T. Brown of International General Electric Company, Exhibit DX-213. And it discusses a number of things, and I read from Paragraph 4:

> "The economic wisdom of manufacturing in Australia may be open to question. But it is very certain that having once engaged in such manufacture and established a secondary industry employing thousands
1582 of Australians, no government would dare to remove altogether the duty at present applied to imported

receivers. The Skullen (Labor) Government in the early days of the depression in 1930 voted a total prohibition of the importation of radio receivers. And although this embargo was removed by the next government, the rate of duty was then set at such a figure as to amount almost to prohibition. As an example, we would instance a friend of the company who purchased a receiver in the United States for nine pounds and had to pay 37 pounds duty on entering Australia. Consequently, importation has been restricted to some special lines, such as auto receivers and somewhat novel and, consequently, expensive receivers advertised in American magazines, and specifically ordered by customers, or required by us as samples to illustrate the trend of American development.

1583 "At the present time, it is out of the question to consider the regular importation of receivers owing to the excessive landed costs, particularly on the lower-priced receivers (which represent the bulk of our sales), as the rate of duty is based upon the number of anode streams in the valves."

That means the number of vacuum tubes.

The Court: And the date of that is approximately what?

Mr. Dodds: That is dated April 23, 1935.

The Court: Thank you.

Mr. Dodds: So, again, as in the case of Canada and England, even if we were to assume arguendo, that Hazeltine were involved in activities in Australia which might be counter to the antitrust issues, again Zenith has not shown any loss in business has resulted due to any pressure or interference of the Hazeltine patents being in the ARTS Pool.

In the first place, as we pointed out before, neither

ARTS nor anyone else can prevent the importation.
1584 They can only decline to license it.

Secondly, ARTS' policy has consistently been to license importation. ARTS' licenses Nos. 5 and 6 do not prohibit importation.

Mr. Wright testified at Pages 713 and 714 that he had never made any attempt to build up radio business in Australia. And he testified further at Page 714 that Zenith had never asked ARTS for a license for either radio or television.

1585 The real basis for Zeniith's failure to export substantial volumes of radio or television receivers was the government prohibition and the prohibitive tariff of several hundred per cent. There is no evidence to what date, if any, that tariff was ameliorated. That probably accounts for the fact that in the four years of accounting for which Mr. Stevenson supplied figures—in four years, they exported fourteen receivers, television receivers, and forty-eight radio receivers—in four years—to Australia.

In summary, it is Hazeltine's position with respect to each of Canada, England, and Australia that the only concerted action constituting an impediment to importation, if any, was exactly what the court suggested—concerted action between the members of the Pools themselves, foreign companies in a foreign country, and whose actions are effective only in that country.

The only joint actions to which Hazeltine has been a party has been its contracts, bi-lateral contracts with the General Electric Company, the CRPL, and the Neu-
1586 trodyne Proprietary, although I think it can be easily assumed, because it is a controlled subsidiary, that that would extend also to the bi-lateral contracts between Neutrodyne Propfietary and ARTS, although Neutrodyne Proprietary was never a member of ARTS, but only granted a license to ARTS.

It seems to us that what Mr. McConnell has done is just to scream conspiracy over and over and over again ad nauseam, following the cardinal principal of propaganda, that if you repeat an untruth often enough, people will begin to believe it.

Finally, Hazeltine submits that the figures on which the asserted lost profits are based are subject to gross errors. Your Honor will recall that on cross-examination of Mr. Stevenson, who supplied the figures of DX 218 and 220, he admitted that many of the costs labelled fixed costs in fact varied with volume and were by his definition variable costs.

You will also recall that there was an uncertainty as
1587 to the total of the U. S. production figures on which Zenith's share of the market was computed. And Mr. Stevenson, I believe it was, acknowledged that if the United States market were actually larger than the figures reported by the Electronic Industries Association, some of which were estimated, then Zenith's share would be an accordingly smaller per cent of that larger total.

The Court may also recall that there were some discrepancies, minor though they were, between the summary sheets and the detail sheets in terms of the numbers of receivers actually—I believe these were marked survey—market figures in Canada. These discrepancies cast some doubt on the accuracy of the whole set of figures.

Now, coming to comment on a number of Mr. McConnell's statements, at pages 1403, 1404, Mr. McConnell cites the RCA case all over again, but carefully neglects to mention that they represented entirely different factual situations.

There are in evidence here as Exhibit PL 36
1588 through PL 43 the pertinent pleadings in the RCA-Zenith litigation cases in Delaware and here in Chicago. And you may recall, I believe in my opening statement, I read portions of those indicating the nature of the

actions which were charged against the defendants in those cases to which the present case has very little relationship.

At page 1406 of the transcript, Mr. McConnell asserts that the Canadian companies, members of the CRPL, are "just alter egos of American companies". Well, that may be his opinion, but there is certainly not an iota of evidence in this case to that effect.

1589 At Page 1407 of the transcript, the assertion is made that Hazeltine Corporation first tried to do business or wanted to do business and get in this pool through Philco. And that is contrary to the fact and to the record. Philco used the Hazeltine patent to sue the pool members and to force a license from the pool members, not to get into the pool.

Now, at page 1411 to page 1413, there is a reference to Exhibit DX 172, which constitutes correspondence between Trav-Ler Radio here in Chicago and Hazeltine. It is submitted that that is a brazen attempt to mislead the court. Mr. McConnell asserts that contrary to my deposition, that I knew all about the pool.

Referring to the letter which Hazeltine wrote in 1940, and which is quoted in part at page 1413 of the transcript, Mr. McConnell said:

> "He didn't know anything about it."

He meaning myself.

> "He knew what the organization was. He knew that they restricted their licenses so that nobody could import sets into Canada, and with his eyes wide open
> 1590 he and Mr. Binns, his president, entered into an agreement with the pool, and that agreement was executed on the 2nd day of July, 1943."

But the fact of the situation was that—and he alleged at about that point in the record that while Mr. Binns signed the letter, that I had written it. That is not a fact.

It was written and signed by Mr. Binns and, according to the evidence, it was several years before I personally had any connection with any of the foreign licensing of Hazeltine, and was completely unfamiliar with it.

It is true that the agreement with CRPL in 1943 I signed as Assistant Secretary. But that was just simply a formal act, an attestation of the principal signatures, but I did not sign it as a principal officer.

Again, he repeats this statement at page 1415 of the record:

"And he knew at the time"—

That is, at the time of the signing of the license—

"that he did it the kind of a license that they were
1591 going to make; that they were going to exclude imports."

And this is contrary to all of the evidence in the case and contrary to fact.

At page 1418 of the transcript, Mr. McConnell makes the assertion that the specifications of the patent in Canada and the counterparts in the United States are the same and, therefore, they cover the same. I believe your Honor will recall from the patent phase of this case that it was brought out without dispute that it is only the claims of a patent that determine what it covers, not the specification. And the cases on that point are cited in the brief in the patent phase of this issue.

The Court: It is your position that this—what you choose to call a sale to the Canadian Pool—was a revocable sale?

Mr. Dodds: No. It was a sale which had an automatic termination date. But it was not—

The Court: But which required renewal?

Mr. Dodds: It required renewal to continue it in force.

The Court: I mean, it wasn't a sale of fee simple.

1592 Mr. Dodds: No. That's right. It was a sale of a complete license for a term of years. That's right.

Some of these are perhaps not worth commenting on, except that they are so numerous, your Honor.

At page 1421 of the transcript, referring to me, he says:

"He has been all over the world in these pools. His footprints are all over."

That is based on two trips to London.

The Court: Fingerprints, too, I think he said.

Mr. Dodds: That was on the documents. He didn't say the fingerprints were all over the world.

1593 Then at page 1423 of the record—1429, he makes the statement that:

"He"—

meaning myself—

"—has helped them"—

CRPL—

"—from time to time in litigation against Motorola."

Well, there is no evidence to that effect, and it is not true.

He makes the further statement on page 1429:

"He"—

meaning myself—

"—thinks it is just one grand big idea, to stop trade between this country and Canada."

That statement on its face makes no sense. Under the Hazeltine U. S. license agreement, if a set is made in the United States, Hazeltine collects a royalty whether it is sold here, in Canada, or Timbuktu. If it is exported to Canada, it loses nothing. The more exportation, the more royalties Hazeltine collects. So it is not any

1594 grand idea on the part of Hazeltine to stop trade between Canada and he United States.

On page 1430, Mr. McConnell states:

"We are asking this court to enjoin the use of this"—

the word is license, but I think he means patent—

"—against us so that we can have a chance to obtain a license from Hazeltine under their patents to manufacture our goods and sell them in Canada under their Canadian licenses."

Now, this have a very hollow ring. There is not the slightest explanation about Zenith's anxiety for a license under Hazeltine's Canadian patent with its assiduous advoidance of a license under the corresponding patents in the United States.

On page 1434 of the transcript, the court asked Mr. McConnell:

"How serious was the threat in regard to the radio business after 1955?

"Mr. McConnell: The seriousness of the threat of the radio business is that you cannot sell radios alone.

1595 You have got to sell them in conjunction with an entire line."

And we submit that that is a commercial problem, not a legal problem.

1596 There is a surprising statement at the bottom, commencing at the bottom of Page 1441 of the transcript, the opinion of Ira Adams, the chief patent counsel of RCA, in this evidence in which he said as far back as 1924 that you couldn't use a Patent Act to implement a pool of this kind. But as it was brought out during the cross-examination of Mr. Wright, that opinion was 11 years before the present act of 1935. There is no evidence in this case what Canadian law was in 1924, but, in any event, we are not primarily concerned with events prior to 1935 when the present Patent Act became effective.

Again, Mr. McConnell refers repeatedly, in retrying the RCA case, that they gave as a result of the consent decree in the government antitrust action licenses under their Canadian patents, but he carefully avoids mentioning that there were very much more severe penalties in that decree than that. It also required royalty-free patents under all of your United States patents subject to certain limited exceptions, and this decree became, as a result of practices, entirely unrelated to the inclusion of their
1597 patents in CRPL. That was only a very minor incident.

Mr. McConnell made a statement in his statement this morning that patents were a grant, effectively a grant, a franchise from the government and, therefore, should be treated with a certain amount of sanctity because of that. But the authorities hold that patents are not a grant, they are not a franchise, they are a contract between the Government and the inventor.

And the Government says, "We will give you a right to exclude others from the use of your invention for a limited period in consideration of the disclosure of a new invention, which after the expiration of that limited period then enriches the technology and advances the progress of the useful art.

Mr. McConnell commented upon the fact that Mr. Westermann had not given any testimony with respect to the foreign license agreements of Hazeltine Corporation, but the simple answer to that is that Mr. Westermann was elected as an officer of Hazeltine Research and became interested in licensing at all only within the last year,
1598 and has had no contact or any familiarity whatever with the foreign licensing.

As I previously advised, the only individuals familiar with that time are deceased and no longer with us.

I believe that that concludes the closing argument for the plaintiff.

The Court: Thank you, Mr. Dodds.

1599 The Court: Would you care to respond or not, Mr. McConnell?

Mr. McConnell: Well, for about five minutes, if it won't bother you too much.

The Court: All right.

Final Argument On Behalf Of The Defendant And Counter-Plaintiff by Mr. McConnell.

I am not going to back over these facts and questions. We have argued them at great length.

I do want to point out just in closing that in viewing those proofs, we can't just take one contract as Mr. Dodds has attempted to do and say, "That is it."

In the case of Continental Ore Company against Union Carbide Corporation, 370 U. S. 690, the court said:

> "In cases such as this plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each.
>
> "The character and effect of a conspiracy are not
> 1600 to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole."

Now, I have developed the whole, the whole thing, the plan and the rest of it, and the agreements between the parties that they got into and all of that, and I am not going to go back and review that again.

I do want to say in closing, however, something that I did not touch on at all in my opening argument, and that is the question of damages.

In all of these situations, cases of this kind where a mar-

ket has been destroyed, we have different rules of damage, and we are going to set out those cases in the briefs.

And in Rankin against Associated Gold Posters of the United States, which was a Court of Appeals decision in the Second Circuit, 42 F. 2d 150 and 155, which was followed in a very recent case by our Court of Appeals of the Seventh Circuit, 1960, 280 F. 2d 508, this rule of damages was allowed, and it is exactly the kind of proof that was
1601 offered here in this case:

"In its proof of damages Rankin was permitted under objection and exception to show by the testimony of its treasurer and by a compilation he had made based on the net profits of the business in 1911, and from his knowledge of business conditions when free of defendant's unlawful interference, what he considered would have been the normal increase of this plaintiff's business from year to year. He was permitted to estimate, on this basis, its probable yearly earnings from July, 1913, to June 30th, 1918, and to explain how his figures were arrived at. The fact that this amount of the plaintiff's damages could not be expressed in exact figures did not make them speculative. There was no speculation as to the fact of actual damage. Its business had been seriously curtailed. The defendants had caused the damage and they cannot be permitted to escape liability because it is difficult for
1602 the plaintiff to express in terms of dollars the damages it has suffered. The evidence, while purely an estimate and introduced as such, was proof of a kind as definite and certain as the subject matter admitted. It had to do with what was never actually earned because of the defendants' wrongdoing. The witness testified from his knowledge of the business history, made his calculations upon what appears to be a reasonable basis, and the defendants had ample oppor-

tunity by cross-examination or the offer of their own evidence on the subject to discredit them and to show any fallacy in his reasoning or testimony.

"Whatever may be said of its weight, and that was entirely for the jury, we have no difficulty with its admissibility."

1603 Now, that same rule is applied in the Bigelow case. That is a case that I argued in the Supreme Court of the United States where the Court of Appeals here had reversed on the ground that the evidence was speculative, and the Supreme Court said where wrongdoers by conspiracy have destroyed a market they cannot complain if there is any uncertainty in the proof.

Now, in the instant case Mr. Dodds has offered no opposition evidence whatever. He hasn't brought anybody in here to testify as to what this company could or could not do in this market. Certainly such evidence would be available and it hasn't appeared. The only inference that we can draw from that is that nobody could dispute it.

Now, one further observation and then I am through. Mr. Dodds has treated this case as if we were dealing with Hazeltine alone. We have in evidence here the background of these companies, their parents, their subsidiaries, and the reach and scope of their operations throughout the world. It is put in evidence as background and it is

1604 in evidence, and that evidence shows that the companies up in Canada are owned by American companies, solely owned, wholly-owned subsidiaries. That evidence is here. We are dealing with the impact here of all these companies combined. We are not just dealing with the impact of one or two patents in the Hazeltine portfolio. We are dealing with the impact of a terrific conspiracy composed of the largest operating units in an entire industry, and it is a conspiracy designed to control an industry, and they are in it, and being in it, they are charged

with whatever the conspirators did, not just what they may or may not do alone with their patents.

Now, the law will be developed in our briefs. I am not going to labor it any further here. I think that I developed completely our position in the argument this morning, and I thank your Honor for your patience.

The Court: Well, the Court will take under advisement the motion to strike with the assurance to Mr. Dodds that unless the Court is convinced by evidence other than that evidence which you moved to strike at the time it was
1605 offered, you may look forward with anticipation to my ruling.

It might be helpful to the Court if you, in not too great detail, set forth the documents, and, perhaps, by name the evidence that you consider should not have been received by the Court unless there was evidence regarding a conspiracy prior to the time that it was offered so that I will be able to catch it quickly.

Of course, in the two matters before me, the defense of misuse and then the counter-claim, there is a different burden as to each. I will await your suggestions at this time as to whether you want to take that in the normal fashion in which it is handled where you will perhaps have the opening brief and reply in regard to misuse, and, of course, you have the opening brief and reply in regard to your affirmative counterclaim.

Mr. McConnell: No question about that.

Mr. Dodds: I would think that the defense of misuse is an affirmative defense also.

The Court: That is right, so you have the burden on both of them.

Mr. McConnell: I would think so.

1606 The Court: All right, fine. I overlooked that factor.

Now, do you want to agree on some kind of a briefly schedule?

1607 Mr. Dodds: Your Honor, just one point before that.

The Court: Yes.

Mr. Dodds: In addition to these documents which were taken from the alleged co-conspirators' files, in the stipulation filed with the Court there was, in addition to that, a large group of documents, mostly correspondence, which was taken from Zenith's files, which I believe is not an alleged co-conspirator. Most of these are correspondence, letters, and the stipulation indicated that these could be offered and received in evidence subject to the following objections, and one of the objections was the receipt in evidence of those documents from the files of Zenith Radio Corporation which have not been proved. A few of them have been identified and have been proved by the testimony of Mr. Wright and Mr. Crotty, but the great bulk of them have not.

The Court: I assume another test is the question of relevancy.

Mr. Dodds: There is also reserved the question of relevancy, but I think that that would have to be argued

1608 on an individual basis, and I think we earlier agreed that perhaps that could be saved for the briefs, so that we wouldn't spend time arguing a great many things which are not going to be used. But on the question of competent evidence that, I think, applied to the group as a whole. These miscellaneous loose papers from the Zenith files which were not identified either by the addressor or addressee, with no opportunity to cross-examine, we submit, are just not competent evidence.

The Court: Well, of course, I am not quite sure what you are talking about at this time.

Mr. Dodds: Well, I say, it is mostly correspondence.

You will recall there is one that they called a bulk exhibit, a series of correspondence between Zenith and some of its dealers and distributors. They were not co-conspirators. There was nobody who identified any of that correspondence or the circumstances under which—

The Court: I ame sure there will be no contention that the distributors were co-conspirators.

Mr. McConnell: That isn't the theory upon which they are offered.

1609 The Court: I didn't think so. If it was, I wanted a further explanation that I haven't got now.

Mr. McConnell: No, there is no theory of that kind. The theory of that kind was that that is an exception to the hearsay rule that that is the reaction of the trade and shows our state of mind in dealing with the situation. We have plenty of authority on that. We will put it in our brief.

The Court: All right.

Mr. Dodds: Can we perhaps reserve a decision on that?

The Court: I will reserve all decisions on controversial matters that have not been passed on up to this time.

Now, in regard to a briefing schedule?

Mr. McConnell: Well, I would suggest—we have a long record here—I would suggest 30 days, if that is not too much, your Honor.

The Court: Oh, no.

Thirty, thirty and twenty, or what?

Mr. McConnell: That is all right. That would be very good.

1610 Mr. Dodds: That will be all right.

Now, there is one other point which is not greatly related, but it is in this case, and that is the plaintiff's reply brief on the infringement issues. We were served last week with a 68-page brief of defendant, and I believe that the time that is presently set calls for a reply brief in 15 days from that date last week.

The Court: You would like that extended?

Mr. Dodds: I would like that extended.

Mr. McConnell. We have no objection.

Mr. Dodds: Perhaps we can extend that and we file that concurrently with their filing their brief on these affirmative matters.

The Court: You want that reply brief extended 30 days from today, is that what you want?

Mr. Dodds: Yes.

The Court: All right, that will be the order.

Be sure that the Clerk gets a memorandum of it so that the record will be straight.

Mr. McConnell: Now, physically, your Honor, a 1611 lot of documents have been identified here, and we had intended—I noticed that Mr. Dodds did it with certain groupings of documents—we had intended to put those in folders with captions on them so that your Honor would have them there and know what category they fall into in the trial of this case, and we will do that within the next day or so. We will have those in your hands.

The Court: All right.

Mr. Dodds: Your Honor, there is one very small, minor item. You may recall that Mr. Wright produced in response to my request a sheaf of figures on export sales. In the first place, they are monthly totals and there is a great deal of information that is not necessary. I have just added up on an adding machine the export figures excluding the three years—Canada, Great Britain, and Australia. I gave a copy of that to Mr. Curtis this morning and it would much reduce the weight of the record if we could just insert those few figures than this big sheaf of documents.

Mr. McConnell: We want a chance to check those 1612 figures.

Mr. Dodds: Certainly.

The Court: Yes, but I would appreciate you gentlemen, if you could, agreeing on the figures that are relevant as far as this lawsuit is concerned and not compel the Court to go thumbing through all of these to find something.

Mr. McConnell: I agree.

Mr. Dodds: Perhaps we can raise a stipulation on that.

The Court: Two reasonable men should have no difficulty in arriving at that.

Mr. McConnell: I don't think we will.

The Court: And I don't anticipate that you will.

Mr. Dodds: Your Honor, there is just one very minor point. I hope that you won't think I am impertinent, but I would like to introduce the hardest working member of our team, Mrs. Dodds.

The Court: I know that there would have been times when you would have been lost in this trial if she had not been sitting there.

Mr. Dodds: All of the time.

1613 Again on behalf of the plaintiff, may I express appreciation.

(Which were all the proceedings had and testimony taken in the trial of the above-entitled cause on the days and dates aforesaid.)

1614 IN THE UNITED STATES DISTRICT COURT.
(Caption—59-C-1847)

Certificate.

I hereby certify that the above and foregoing pages, numbered consecutively from 1 to 1613, inclusive, constitute a full, true and accurate transcript of the official shorthand notes taken at the trial of the above-entitled cause before the Honorable Richard B. Austin, one of the Judges of said Court, on February 17, 18, 19, 20, 24, 25, and 26, 1964.

Raymond J. Comeau,
Official Court Reporter, United States District Court Northern District of Illinois Eastern Division.